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Vol. I.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 544.

ARTHUR GREEY, AS TRUSTEE IN BANKRUPTCY OF SCHWAB-KEPNER COMPANY, BANKRUPT, APPELLANT,

vs.

JOHN E. DOCKENDORFF.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED MAY 7, 1913.

(23,676)

(23,676)

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Petition in Bankruptcy, filed November 29, 1910.

United States District Court,

DISTRICT OF NEW JERSEY.

In the Matter

of

The Petition of HAROLD V. STORY, THEODORE VIETOR and WHEELER G. PHILLIPS, to have the SCHWAB-KEPNER COMPANY, a corporation organized under the laws of the State of New Jersey, adjudicated a bankrupt within the meaning and purview of the Statutes of the United States, pertaining to bankruptcy.

To the Honorable the Judges of the District Court of the United States, for the District of New Jersey:

The petition of Harold V. Story, Theodore Vietor and Wheeler G. Phillips, respectfully shows, upon information and belief:

First. That the Schwab-Kepner Company is a corporation organized and existing under and by

4 virtue of the laws of the State of New Jersey, and is engaged in a mercantile pursuit, to wit, buying, selling and dealing in all kinds of dry goods. That said company has for the greater portion of six months next preceding the date of the filing of this petition, had its principal office at North Avenue, Cranford, Union County, in the State of New Jersey, and has its principal place for the conduct of its business at No. 66 Leonard Street, in the City of New York, State of New York.

Second. Your petitioners further represent that the Schwab-Kepner Company is insolvent, and that
5 whilst in that condition it has, within one week next preceding the date of this petition, committed an act or acts of bankruptcy, in that on the 25th day of November, 1910, it transferred, assigned and set over a part of its assets, amounting to $235.20, unto J. E. Dockendorf, who was then a creditor of said corporation, with the intent, object and purpose of giving the said Dockendorf a preference over the other creditors of said company, and that within ten days prior to the filing of this petition, it likewise transferred to the American Shirt Company, it being a creditor of said corporation, a certain other portion of its assets and property,
6 amounting to $250, with the intent, object and purpose of preferring said creditor over the other creditors of said corporation.

Third. That your petitioners are creditors of the said Schwab-Kepner Company, and have provable claims against said bankrupt, amounting in the aggregate, in excess of securities held by them, to more than $500.

That the nature and amount of your petitioners' claims are as follows:

That on and prior to the 28th day of November, 1910, the said The Schwab-Kepner Company, was

indebted to W. Benton Crisp, Esq., in a sum in 7
excess of $100, for services rendered to said corporation and for disbursements made by said W. Benton Crisp in its behalf, in a certain case pending in the Supreme Court of the State of New York, entitled, "Melvin H. Morse v. Schwab-Kepner Company," which sum said Schwab-Kepner Company promised and agreed to pay, but no part of which has been paid, although the same is now due and has been duly demanded.

That prior to the commencement of this proceeding, said W. Benton Crisp duly assigned said claim to your petitioner, Harold V. Story, who thereupon became and now is the lawful owner and holder 8
thereof.

That said company is indebted to your petitioner, Theodore Victor, in the sum of $100, for services rendered to your petitioner prior to the date hereof, which sum said company promised and agreed to pay to your petitioner, but no part of which has been paid, although the same is now due and has been duly demanded.

That on and prior to the date hereof, the said company was indebted to Henry H. Bradley, in the sum of $15 for commissions due to said Bradley upon the sale of goods for said company, at sundry times prior to said date, which sums said com- 9
pany agreed to pay to said Bradley, but no part of which has been paid, although duly demanded.

That prior to the filing of this petition, the said Bradley, for value received, duly assigned said claim to your petitioner, Wheeler G. Phillips, who thereupon became and now is the lawful owner thereof.

That said company owes debts largely in excess of the sum of $5,000.

Wherefore, your petitioner prays that service of this petition, with a subpœna, may be made upon

that the said Schwab-Kepner Company, as provided by the Acts of Congress relating to bankruptcy, and that it may be adjudicated by this Court to be a bankrupt within the purview of said act.

HAROLD V. STORY,
THEODORE VIETOR,
WHEELER G. PHILLIPS.

(Verified by three above named petitioners on the 29th day of November, 1910.)

IN THE DISTRICT COURT OF THE UNITED STATES, 13

FOR THE DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy. Adjudication.

At Trenton, in said District, on the 19th day of December, A. D. 1910, before the Hon. Joseph 14
Cross, Judge of said Court in Bankruptcy, the petition of Harold V. Story, *et als.*, against Schwab-Kepner Company, of Cranford, in the County of Union, and district aforesaid, that it be adjudged bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Schwab-Kepner Company is hereby declared and adjudged bankrupt accordingly.

Witness the Hon. Joseph Cross, Judge of said Court, and the seal thereof, at Trenton, in said district on the 19th day of December, A. D. 1910.

GEORGE SHANNON, 15
Clerk.

Per Benjamin F. Havens,
Deputy.

Lists of Claims Filed and Allowed.

	Thomas Edwards,	(Priority)	$34.90
	Henry J. Waldeyer,	"	84.30
	T. Gaines Amecy,	"	21.25
	Ludwig Hoffman,	"	10.58
	Austin J. Wall,	"	126.00
	W. A. Corbett,	"	132.66
	Theo. Victor,	"	104.16
	Wampanoag Mills,		5,173.66
	J. P. Stevens & Co.,		936.51
	Pocasset Mfg. Co.,		3,828.15
	Oberly & Newell,		5.55
	The Greylock Mills,		1,165.83
17	Davol Mills,		1,814.17
	Granite mills,		13,208.85
	Osborn Mills,		6,278.43
	Lincoln Mfg. Co.,		18,782.57
	New Bedford Cotton Mills Corp.,		1,680.53
	Weetamoe Mills,		11,511.62
	Albert F. Gatow,	(Priority)	32.50
	Helen R. Palmer,	"	24.00
	Charles G. Barlow,	"	71.50
	Virgil Gatto,	"	30.00
	May Hardy,	"	21.67
	E. J. Tietenberg & Co.,		52.55
	The International Hdkf. Co.,		.91
18	G. A. Stafford & Co.,		2,378.31
	Woodward Baldwin & Co.,		13,288.23
	Seely Office Appliance Co.,		9.25
	Postal Telegraph Cable Co.,		2.32
	E. Hazel Zeisloft,	(Priority)	32.50
	Amer. District Telegraph Co.,		6.70
	H. W. Alexander Est.,		14.10
	Henry Birdsall,		117.13
	Berkshire Cotton Mfg. Co.,		1,107.59
	Harry MacCaulis,		56.51
	Parker Mills,		13,622.48
	Daas & Teen,		1,869.10

Seaconnet Mills,		20,671.99	19
Am'n Linen Co.,		659.75	
Merchants Mfg. Co.,		7,696.31	
Davis Mills,		25,800.05	
Valley Falls Co.,		37,739.29	
Wilson & Bradbury,		11,034.17	
Flint Mills,		3,594.84	
Hargraves Mills,		25,392.06	
Samoset Mills,		2,392.52	
Cochrane Mfg. Co.,		3,595.67	
Wm. Wells Blood,		145.10	
C. M. Slade,		34.14	
Edward S. Sykes, Jr.		63.82	
Bessie B. Walsh,	(Priority)	31.00	20
	"	300.00	
Frederick Hertel,		160.77	
Am'n Textile Co.,		3,896.10	
L. J. McGrath,	"	32.50	
Fred Heene, Jr.,	"	32.50	
Howard F. Burkhardt,	"	134.37	
Fred E. Reis,	"	152.00	
Tecumseh Mills,		1,593.98	
Conanicut Mills,		1,693.98	
Underwood Typewriter Co.,		14.00	
Clarence Arkwright,	"	54.67	
Geo. Morrison Co.,		13.00	
Isaac H. Veadig, (Priority) $201—		1.00	21
The Central R. R. of N. J.,		2.03	
Wm. Stickel & Co.,		2,577.32	
Olga M. Stang,	(Priority)	20.00	
Mendel Bros.,		276.66	
Mendel Bros.,		Not allowed	
Henry P. Adams,		7.80	
Western Union Tel. Co.,		29.74	
Jas. W. Greer, (Priority) $300.00		150.00	
Darrach & Co.,		399.10	
The Bradstreet Co.,		82.50	
The Hagedorn-Merz Co.,		529.11	

22	N. Y. Tel. Co.,	205.62
	Colonial Hdkf. Mfg. Co.,	554.16
	Dartsmouth Mfg. Co.,	6,161.37
	Herrmann Ankam & Co.,	531.21
	Cold Spring Bleaching & Finishing Works,	15,308.66

I hereby certify that the foregoing is a list of claims filed and allowed in above stated matter to this date, September 3rd, 1912.

ATWOOD L. DE COSTA,
Referee in Bankruptcy.

23

24

DISTRICT COURT OF THE UNITED STATES, 25

DISTRICT OF NEW JERSEY.

In the Matter

of

The Petition of HAROLD V. STORY, THEODORE VIETOR and WHEELER G. PHILLIPS, to have the SCHWAB-KEPNER COMPANY, a corporation organized under the laws of the State of New Jersey, adjudicated a bankrupt within the meaning and purview of the Statute of the United States, pertaining to bankruptcy. 26

To the Honorable Judges of the District Court of the United States, for the District of New Jersey:

The petition of John E. Dockendorf, respectfully shows:

1. That your petitioner resides at Larchmont, Westchester County, New York, and is engaged in business as a banker at No. 20 Broad Street, in the Borough of Manhattan, City of New York. 27

2. On information and belief, that an involuntary petition in bankruptcy against the Schwab-Kepner Company was filed in this proceeding on or about November 29, 1910, and Edward S. Al- Water, Jr., and Theodore M. Crisp were appointed by this Court receivers of the property of the said The Schwab-Kepner Company.

28 3. That the said The Schwab-Kepner Company is indebted to your petitioner in a sum in excess of two hundred and fifty thousand dollars ($250,000), and that your petitioner holds as collateral security therefor accounts receivable created in favor of the said The Schwab-Kepner Company, and assigned to your petitioner pursuant to an agreement between the said company and your petitioner, originally executed under date of September 21, 1908, and renewed and extended by agreements dated respectively September 21, 1909, and May 16, 1910, which agreements provided in substance as follows:

29 That the said The Schwab-Kepner Company will assign and deliver to your petitioner, within seven days after the shipment of the merchandise represented thereby, accounts receivable for and representing all sales of merchandise made by it from and after the date of the agreement, except sales for cash in hand; that your petitioner will loan or advance to the said The Schwab-Kepner Company on the security of said accounts receivable, eighty per cent. (80%) of the net face value of such thereof as he shall approve; that all checks, notes or money, or security or collateral of any kind
30 which shall come to the said company in payment or on account of or in connection with any of the assigned accounts receivable, shall be immediately delivered to your petitioner, the same being his property, and that the lien of your petitioner on the accounts receivable assigned to him shall include any money which shall become due him (commissions), as well as the amount of all the loans and interest thereon.

4. That your petitioner, from the time of the execution of the first of said agreements, dated September 21, 1908, received from the said The Schwab-

Kepner Company, from day to day, assignments of 31
its accounts receivable and of the merchandise therein described, and at the same time from day to day made loans or advances to the said company on the security thereof. That in some cases where the accounts receivable called for future deliveries the merchandise represented thereby was boxed and stored in warehouse for the account of your petitioner and the negotiable warehouse receipts for the same were endorsed and delivered to your petitioner.

5. That in the normal course of business the remittances in payment or on account of the accounts receivable which had been assigned to your 32
petitioner were received at the office of the said The Schwab-Kepner Company and were immediately delivered to your petitioner, the checks, notes and drafts being endorsed by the said company to the order of your petitioner. Similarly, returns of merchandise by purchasers were received at the office of the said The Schwab-Kepner Company and were stored in warehouse for the account of your petitioner, the negotiable warehouse receipts for the same being endorsed and delivered to your petitioner. On information and belief, that since the 29th day of November, 1910, remittances have been received at the office of the said The Schwab-Kep- 33
ner Company, in payment and on account of the accounts receivable, which were assigned to and are the property of your petitioner, but that the said remittances have been retained by the receivers hereinabove named, and have not been forwarded to your petitioner, to whom they belong. That your petitioner has not notified the debtors under said assigned accounts receivable of the assignment thereof to your petitioner, for the reason that it will facilitate the collection thereof to have the remittances continue as heretofore to be sent to the

34 office of the said company. The aggregate of the face value of assigned accounts receivable held by your petitioner is in excess of the indebtedness of the said The Schwab-Kepner Company to your petitioner, and that it will be to the advantage of the said company and of its creditors, as well as to the advantage of your petitioner, to have the said accounts collected as speedily as possible. That it is probable that some of the merchandise shipped to customers of the said The Schwab-Kepner Company, the accounts receivable for which have been assigned to and are the property of your petitioner, will be returned to the office of the said company,
35 and that the same being the property of your petitioner should be turned over to him.

6. That the records in the office of the said The Schwab-Kepner Company, as well as in your petitioner's office, show in detail all the accounts receivable which have been assigned to your petitioner, as well as loans and advances made on the security thereof and the remittances heretofore received by your petitioner and applied in reduction of said loans and of the present balance of accounts receivable held by your petitioner and of the loans unpaid.

36 Therefore, your petitioner prays for an order authorizing and directing the Receivers of the property of the said The Schwab-Kepner Company to pay to your petitioner the amount of all collections made by the said company prior to the time said Receivers qualified as such, and which have come into the hands of the said Receivers, and of all collections by said Receivers since that time in payment or on account of the accounts receivable heretofore assigned to your petitioner; and further authorizing and directing the said Receivers to endorse and turn over to your petitioner all checks,

drafts and remittances which heretofore have been 37
received by them and which shall hereafter be received by them in payment or on account of the accounts receivable assigned to your petitioner, and to turn over and deliver to your petitioner all merchandise returned by purchasers and received by said Receivers, the accounts receivable representing which have been assigned to your petitioner, and that said Receivers be directed to authorize and direct any warehouse company or concern to deliver to your petitioner the merchandise stored therein by The Schwab-Kepner Company, for which your petitioner holds warehouse receipts endorsed by said company; until the indebtedness of the said 38
The Schwab-Kepner Company to your petitioner is paid in full.

No other application for an order to this effect has been made. And your petitioner will ever pray, etc.

Dated, New York, December 1, 1910.

JOHN E. DOCKENDORF,
Petitioner.

Einstein, Townsend & Guiterman,
Attorneys for Petitioner,
12 Broadway,
Manhattan,
New York City. 39

State of New York,
City of New York,
County of New York, } ss.:

John E. Dockendorff, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof and that the same is true of his own knowledge except as to the matters

40 therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

JOHN E. DOCKENDORF.

Sworn to before me this 1st day of December, 1910.

N. B. Cornell,
Notary Public,
N. Y. County.

[SEAL.]

DISTRICT COURT OF THE UNITED STATES.

41 DISTRICT OF NEW JERSEY.

In the Matter

of

The Petition of HAROLD V. STORY, THEODORE VIETOR and WHEELER G. PHILLIPS, to have the SCHWAB-KEPNER COMPANY, a corporation organized under the laws of the State of New Jersey, adjudicated a bankrupt within the
42 meaning and purview of the Statute of the United States, pertaining to bankruptcy.

The answer of Edward S. Atwater, Jr., and Theodore M. Crisp, as Receivers of the Schwab-Kepner Company, respondents to the petition of John E. Dockendorf, shows to this Court, and alleges, upon information and belief:

I. Denies the allegations contained in paragraphs

of the petition of John E. Dockendorf herein, 43
numbered 3, 4, 5 and 6, except that the respondents herein admit that under date of September 21, 1908, an agreement was executed between the said Schwab-Kepner Co. and the said John E. Dockendorf, and further agreements were entered into dated respectively September 21, 1909, and May 16, 1910, which agreements are in writing, and for the contents thereof the respondents pray leave to refer thereto when the same are produced herein.

II. Your respondents further allege that the before mentioned agreements are not the only agreements in writing or otherwise between said Schwab-Kepner Co. and John E. Dockendorf, but 44
that various other and further agreements were made between said Schwab-Kepner Co. and John E. Dockendorf concerning the relations of the said company and said Dockendorf.

III. The respondents admit that certain records of the said Schwab-Kepner Co. are in the possession of respondents as Receivers herein, and for the contents thereof respondents pray leave to refer thereto when the same are produced upon the trial hereof.

Respondents further allege to this Court, and show, upon information and belief: 45

IV. That at all of the times herein mentioned, said Schwab-Kepner Co. was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey. That its principal office and place of business has been in the City of New York, Borough of Manhattan, State of New York.

V. That the place of business of said John E. Dockendorf, petitioner herein is, and at all of the times herein mentioned was likewise in the City

46 of New York, Borough of Manhattan and State of New York, and that all the transactions hereinafter alleged and referred to between said Schwab-Kepner Co. and John E. Dockendorf, took place and occurred in the City of New York, Borough of Manhattan, and State of New York.

VI. That at all of the times subsequent to and including May 1, 1910, and for a long time prior thereto, said Schwab-Kepner Co. was hopelessly and totally insolvent and unable to pay its debts in full; and that for a long time prior to May 1, 1910, and subsequent thereto, and until August 1, 1910, the liabilities of said Schwab-Kepner Co. exceeded
47 its assets at a fair valuation, by about the sum of $700,000, and subsequent to said August 1, 1910, the liabilities of said Schwab-Kepner Co. exceeded its assets, at a fair valuation, by about the sum of $350,000.

VII. That at all of the times herein mentioned said Schwab-Kepner Co., its officers and directors, and said Dockendorf, well knew and had reasonable cause to believe the financial condition of said Schwab-Kepner Co. as above set forth, and well knew and had reasonable cause to believe that the said Schwab-Kepner Co. was hopelessly and totally
48 insolvent as aforesaid, and unable to pay its debts in full, and that it would ultimately, and within a very short time be petitioned into bankruptcy or other insolvency proceedings; that the appointment of a Receiver and Trustee of its assets and effects would ultimately and within a very short time, be necessary and unavoidable.

VIII. That in or about the months of May, June and July, 1910, the said Schwab-Kepner Co. was indebted to said Dockendorf in the sum of about $190,000 for moneys loaned to said Schwab-Kepner Co. by said Dockendorf.

IX. That at or about said time, said Dockendorf held or pretended to hold certain assignments of accounts due, or to become due to said Schwab-Kepner Co. from its debtors, as security for such indebtedness. 49

X. That said accounts of debtors of said Schwab-Kepner Co. had been theretofore assigned by said company to said Dockendorf.

XI. That in or about the months of May, June and July, 1910, the said assignments of accounts of debtors of said Schwab-Kepner Co. so held by said Dockendorf as security for his debt as aforesaid, were ascertained to be of little or no value, by reason of the fact, among other things, that the indebtedness apparently due to the said Schwab-Kepner Co. thereon did not in fact exist, and the said apparent indebtedness due to the said Schwab-Kepner Co. was not in fact due and owing, in whole or in part, so that by reason of the facts aforesaid, the apparent security which said Dockendorf held as security for his indebtedness aforesaid was of little or no value. 50

XII. That notwithstanding the fact that the said Dockendorf at all of the said times knew and had reasonable cause to believe that the said Schwab-Kepner Co. was hopelessly and totally insolvent, and unable to pay its debts in full, and that it would ultimately and within a short time be petitioned into bankruptcy or other insolvency proceedings, and its assets administered by a Court of competent jurisdiction for the benefit of its creditors, said Dockendorf continued to loan the said company moneys for the purpose and with the intent on his part and on the part of said company, that said company should continue its business as theretofore conducted, purchase goods, wares and merchandise from the persons, firms and corpora- 51

52 tions from whom it had theretofore been in the habit of purchasing goods, wares and merchandise, causing said goods, wares and merchandise to be sold to customers of said Schwab-Kepner Co., and outstanding accounts created thereby, and said Dockendorf further caused such new outstanding accounts so created, to be transferred to him, and said Dockendorf now holds or pretends to hold the same as security for his debt as herein set forth.

XIII. That thereafter, and in the months of July and August, 1910, and subsequent thereto, the said Schwab-Kepner Co. did continue its business as theretofore conducted by it, did purchase goods,
53 wares and merchandise from the persons, firms and corporations from whom it had theretofore been in the habit of purchasing the same, caused said goods, wares and merchandise to be sold and outstanding accounts to be created thereby, and caused such new outstanding accounts so created to be transferred to said Dockendorf, so that in place and stead of the security, worthless in great part, which said Dockendorf held in or about the months of May, June, July and August of 1910, the said Dockendorf held at the time of the institution of the proceedings in bankruptcy herein, and at the time of the appointment of your respondents as re-
54 ceivers herein, assignments of accounts in excess of $100,000, of which more than $300,000 were good and collectible, as security for his debt due at the time of the filing of the petition in bankruptcy herein, of $252,838.54, as claimed by him.

XIV. That said accounts of debtors of said Schwab-Kepner Co. were so created and assigned to the said Dockendorf by the said Schwab-Kepner Co. by and with the full knowledge, consent and connivance of the said Schwab-Kepner Co., and the said Dockendorf, and for the purpose of securing

the repayment to said Dockendorf in full of his said claim. 55

XV. That within four months prior to the filing of the petition in bankruptcy herein, and between about August 1, 1910 and December 1, 1910, the said accounts of debtors of the said company were, under the circumstances aforesaid, to an amount in excess of $400,000, as aforesaid, assigned, transferred and set over to the said John E. Dockendorf as security for his indebtedness as aforesaid.

XVI. That subsequent to said August 1, 1910, the said Dockendorf loaned said Schwab-Kepner Co. various sums of money, so that at the time of the filing of the petition in bankruptcy herein, said Dockendorf was a creditor, as aforesaid, of said Schwab-Kepner Co. in the sum of $252,638.54, as claimed by him. 56

XVII. That said Schwab-Kepner Co. with the knowledge, consent and connivance of said Dockendorf transferred and set over to said Dockendorf the said assignments of accounts and certain other security and assets consisting of goods, wares and merchandise owned by the said Schwab-Kepner Co., and equity in goods, wares and merchandise pledged for loans, also owned by the said company, but hypothecated. 57

XVIII. That the transfers of said accounts of debtors of said Schwab-Kepner Co. and of the goods, wares and merchandise, and equity in goods, wares and merchandise owned by said company to said Dockendorf, were made after the making of the loans by said Dockendorf to said Schwab-Kepner Co., and for a past consideration, and not for a present consideration.

XIX. That in or about the months of May, June, July and August, 1910, and subsequent

58 thereto, and between August 1, 1910 and the time of the filing of the petition in bankruptcy herein, by and with the knowledge, consent and connivance of the said Dockendorf, the moneys obtained by said Schwab-Kepner Co. from said Dockendorf were utilized by the said company in the payment of certain of its pre-existing unsecured debts in full so as to enable the said Schwab-Kepner Co. to continue in business by the creation of further debts in the purchase of goods, wares and merchandise, which debts were and are unsecured debts, and that said Schwab-Kepner Co. with the knowledge, consent and
59 connivance of the said Dockendorf, did utilize the said moneys obtained from said Dockendorf for such purpose, and did create new and greater unsecured indebtednesses for goods, wares and merchandise which were sold in the manner aforesaid, and in order to create new outstanding accounts which were to be and were thereafter, as matter of fact, assigned, transferred and set over to said Dockendorf in the manner aforesaid, so that within the four months prior to the filing of the petition in bankruptcy herein, accounts of debtors of said Schwab-Kepner Co. to an amount in excess of $100,000, were assigned,
60 transferred and set over to said Dockendorf.

XX. That the said Dockendorf likewise, within the four months prior to the filing of the petition in bankruptcy herein, caused the said Schwab-Kepner Co. to transfer, assign and set over to him, as security for advances theretofore made, and under the circumstances aforesaid, substantially all of the goods, wares and merchandise owned by said Schwab-Kepner Co., excepting less than $10,000 thereof; and further, an assignment of the equity of said Schwab-Kepner Co., in all of its pledged merchandise, and assignments of

the accounts of debtors of the Schwab-Kepner Co. to an amount as aforesaid, exceeding $400,000, which was likewise substantially all of the outstanding accounts of the said Schwab-Kepner Co. 61

XXI. That the assets of the said Schwab-Kepner Co. consisted substantially only of the outstanding accounts due from its debtors, and the goods, wares and merchandise which it owned, so that within the four months prior to the filing of the petition in bankruptcy herein, the said Dockendorf by the assignments and transfers as aforesaid, had caused the said company to assign, transfer and set over to him substantially all of its assets, so that the only assets which would be available to general creditors of said Schwab-Kepner Co., would not exceed in value the sum of $10,000. 62

XXII. That by reason of the facts aforesaid, at the time of the filing of the petition in bankruptcy herein, the assets of the said Schwab-Kepner Co. not pledged, did not exceed in value the sum of $10,000 and the indebtedness due to unsecured creditors of said company exceeded $300,000.

XXIII. That in or about the months of May, June and July, 1910, the free and unpledged assets of said Schwab-Kepner Co. exceeded $100,000 and the indebtedness due to unsecured creditors did not exceed $200,000. 63

XXIV. That subsequent to the said last-mentioned time, the free and unpledged assets of said Schwab-Kepner Co. were transformed as aforesaid into outstanding accounts due to the said company. That during and subsequent to said last-mentioned time, the moneys loaned to said

64 Schwab-Kepner Co. by said Dockendorf, were with the full knowledge, consent and connivance of said Dockendorf and said Schwab-Kepner Co. utilized for the payment in full of certain unsecured, pre-existing debts of creditors of said company, thereby preferring said creditors whose claims were paid in full over other creditors of said company of the same class. New indebtednesses were created by the purchase of new merchandise, and said free and unpledged assets, and said new merchandise were, by and with the knowledge, consent and connivance of said Dockendorf and said Schwab-Kepner Co. transformed
65 into outstanding accounts which together with the merchandise and equity in merchandise of said Schwab-Kepner Co., were within the four months prior to the filing of the petition in bankruptcy herein, assigned, transferred and set over to said Dockendorf as before alleged.

XXV. That during and subsequent to said last mentioned times, and up to the time of the filing of the petition in bankruptcy herein, the unsecured indebtedness of said Schwab-Kepner Co. continued to increase, and the increased assets resulting therefrom, as before alleged, were by said Schwab-Kep-
66 per Co. assigned, transferred and set over to said Dockendorf by and with the knowledge, consent and connivance of said Dockendorf and said company.

XXVI. That said Dockendorf well knew that the moneys which he was loaning from time to time to the said Schwab-Kepner Co. during the months of May, June and July of 1910, and subsequent thereto, were being used by the said Schwab-Kepner Co. for the purposes and in the manner aforesaid.

XXVII. That the said Dockendorf did not take into his possession the said merchandise so transferred and assigned to him as security for his debt, as aforesaid, but continued to allow the same to remain in the custody, possession and control of said Schwab-Kepner Co., nor was any record of his lien or pretended lien thereon or therein, filed in any public record or office, or made a matter of public notoriety, nor were the creditors of said company informed thereof. That likewise said Dockendorf did not notify the debtors of said Schwab-Kepner Co., nor the creditors of said company, that the accounts of the debtors of said company had been assigned to said Dockendorf, but the said Schwab-Kepner Co. was allowed to remain in custody, possession and control thereof. 67 68

XXVIII. That the aforesaid was done with the avowed purpose and intent on the part of both said Dockendorf and said Schwab-Kepner Co. of inducing the customers and creditors of said company, and persons dealing with it, to believe that the said company was a company of large responsibility and well able financially to respond to its obligations, and said representations were so made prior to May 1, 1910, and were untrue and false, and were so known to be by the said company and by said Dockendorf. 69

XXIX. That the creditors of said Schwab-Kepner Co., relying thereon, continued to extend credits to said company, and other firms and corporations likewise extended credits to said Schwab-Kepner Co., relying upon the representations made by it as aforesaid.

XXX. That said Dockendorf in order to insure the payment to himself by the said Schwab-Kepner Co. of his debt in full, appointed in May, 1910, by

70 and with the consent of said company, one W. A. Corbett, Secretary, Treasurer and Director of said company as his agent, to collect moneys due to the said company, and to turn the same over to said Dockendorf; and also, in June, 1910, caused one Hardy to be appointed a Director of said company; that said Hardy was merely the clerk, employee and representative of said Dockendorf, and was nominated merely in the interest, to represent and act for and on behalf of said Dockendorf, and accepted the orders, directions and instructions of said Dockendorf in the performance of his duties as Director of said company, and said Docken-
71 dorf's orders and directions only.

XXXI. That the effect of the transfers as aforesaid, has been to give to the said Dockendorf security in full for his debt, and the effect of the said transfer will be to enable said Dockendorf to obtain a greater percentage of his debt than the other creditors of the Schwab-Kepner Co. of the same class, for the reasons before stated, that by reason thereof the said Dockendorf will receive payment in full of his debts, and the other creditors of the said company of the same class to the amount of about $300,000, will receive practically
72 no dividends on account of their claims, unless such transfers as aforesaid be set aside by this Court; and it was the intention of said Schwab-Kepner Co. and of said Dockendorf and of his agents acting therein, that a preference should thereby be given by said company to said Dockendorf, and it was intended by said company and said Dockendorf to hinder, delay and defraud creditors of said company.

XXXII. That the lien given, or pretended to be given by said Schwab-Kepner Co. to said Docken-

dorf, was not given in good faith, nor was it ac- 73
cepted by said Dockendorf in good faith, but was given and accepted in contemplation of and in fraud of the Bankruptcy Act.

XXXIII. That such lien was not given or accepted for a present consideration; that said Dockendorf was not a purchaser in good faith thereof, or for a present, fair consideration.

XXXIV. That the transfers before mentioned are likewise prohibited by Section 66 of the Stock Corporation Law of the State of New York, and Section 61 of the Statutes of the State of New Jersey, entitled "An Act Concerning Corporations," 74
reference to which is hereby made.

Wherefore respondents pray that the petition herein be denied and dismissed; that the assignments of the accounts to said Dockendorff be set aside; that the said Dockendorff be enjoined and restrained from asserting any right, title or interest therein or thereto; that the said Dockendorff be declared to be an unsecured creditor of said Schwab-Kepner Co.; and that your respondents have such and other and further relief as to the Court may seem just and proper.

EDWARD S. ATWATER, Jr.
THEODORE M. CRISP. 75

District of New Jersey, ss.:

Edward S. Atwater, Jr., being duly sworn, says: I am one of the within named respondents; I am acquainted with and have read the contents of the foregoing answer, and the same is true except as to the matters therein stated upon information and

76 belief, and as to those matters I believe the same to be true.

EDWARD S. ATWATER, Jr.

Sworn to before me this
day of January, 1911.

Moses M. Crane,
[L. S.] Notary Public of New Jersey.

District of New Jersey, ss.:

Theodore M. Crisp, being duly sworn, says: I am one of the within named respondents; I am acquainted with and have read the contents of the
77 foregoing answer, and the same is true except as to the matters therein stated upon information and belief, and as to those matters I believe the same to be true.

THEODORE M. CRISP.

Sworn to before me this
day of January, 1911.

Moses M. Crane,
[L. S.] Notary Public of New Jersey.

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DISTRICT COURT OF THE UNITED STATES. 79

DISTRICT OF NEW JERSEY.

In the Matter

of

The Petition of HAROLD V. STORY, THEODORE VIETOR and WHEELER G. PHILLIPS, to have the SCHWAB-KEPNER COMPANY, a corporation organized under the laws of the State of New Jersey, adjudicated a bankrupt within the meaning and purview of the Statute of the United States, pertaining to bankruptcy. 80

The reply of John E. Dockendorff, petitioner, to the amended answer of Edward S. Atwater, Jr., and Theodore M. Crisp, as Receivers of Schwab-Kepner Company respectfully submits to the Court, and alleges as follows:

First. He admits Paragraphs "IV," "V," "VIII" and "X." 81

Second. He denies all of the allegations contained in Paragraphs "VI," "VII," "IX," "XI," "XII," "XIII," "XIV," "XV," "XVI," "XVII," "XVIII," "XIX," "XX," "XXI," "XXII," "XXIII," "XXIV," "XXV," "XXVI," "XXVII," "XXVIII," "XXIX," "XXX," "XXXI," "XXXII," "XXXIII," and "XXXIV," inclusive, except as hereinafter specifically admitted.

Third. He admits that he owns certain assign-

82 ments of accounts due or to become due to the said Schwab-Kepner Company from its debtors as security for advances made from time to time to said Schwab-Kepner Company; that after May 16th, 1910, he continued to loan said company moneys for the purpose and with the intent on his part and on the part of said company that said company should continue its business as theretofore conducted, purchase goods, wares and merchandise from the persons, firms and corporations from whom it had theretofore been in the habit of purchasing goods, wares and merchandise, and causing said goods, wares and merchandise to be sold to customers of
83 said Schwab-Kepner Company, and further advances to be made upon the outstanding accounts created thereby.

Fourth. And further admits that in the months of July and August, 1910, and subsequent thereto, said Schwab-Kepner Company did continue its business as theretofore conducted by it, did purchase goods, wares and merchandise from the persons, firms and corporations from whom it had theretofore been in the habit of purchasing the same, and caused said goods, wares and merchandise to be sold, and outstanding accounts were
84 thereby created, and such new outstanding accounts to be transferred to said Dockendorff as security for further advances made by said Dockendorf, and for the purpose of securing him in the repayment thereof, and that said Dockendorff was a creditor as aforesaid of the said Schwab-Kepner Company as set forth in the petition.

Fifth. And further, he admits that no notice of the assignment of the accounts of said debtors was given by said Dockendorff to said debtors, but in lieu thereof said Dockendorff appointed his agents to receive the same at the office of said Schwab-Kepner Company, and deliver the same to him.

Sixth. And further, he admits that said Docken- 85
dorf appointed W. A. Corlett as his agent to col
lect moneys due to him under said assignments, and
caused one Hardy to attend at the place of business
of said Schwab-Kepner Company, to accept the
orders, directions and instructions of said Docken-
dorf.

Wherefore, your petitioner prays that the said answer be dismissed, and that the prayer of his petition be in all respects granted.

EINSTEIN, TOWNSEND & GUTTERMAN,
Solicitors for Petitioner,
42 Broadway,
Borough of Manhattan, 86
New York City.

Julius Henry Cohen,
Of Counsel.

District of New Jersey, ss.:

John E. Dockendorff, being duly sworn, deposes and says: That he is the petitioner herein. That he has read the foregoing reply and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

J. E. DOCKENDORFF. 87

Sworn to before me this 13th
day of January, 1911.

[SEAL.]

N. B. Cornell,
Notary Public,
N. Y. County.

88 DISTRICT COURT OF THE UNITED STATES.

DISTRICT OF NEW JERSEY.

In the Matter
of
The Petition of HAROLD V. STORY, THEODORE VIETOR and WHEELER G. PHILLIPS, to have the SCHWAB-KEPNER COMPANY, a corporation organized under the laws of the
89 State of New Jersey, adjudicated a bankrupt within the meaning and purview of the Statute of the United States, pertaining to bankruptcy.

The petitioner John E. Dockendorf respectfully demurs to the affirmative claim set forth in Paragraphs "IV" to "XXXIV," inclusive, of the amended answer of Edward S. Atwater, Jr., and Theodore M. Crisp, as Receivers of the Schwab-Kepner Company, upon the ground that the same
90 is insufficient in law to constitute any affirmative defense, counterclaim, or setoff whatsoever.

EINSTEIN, TOWNSEND & GUTTERMAN,
Solicitors for John E. Dockendorf,
42 Broadway,
Borough of Manhattan,
New York City.

Julius Henry Cohen,
Of Counsel.

UNITED STATES DISTRICT COURT. 91

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Alleged Bankrupt.	In Bankruptcy.

Proceedings before Edwin G. Adams, Referee in Bankruptcy, as Special Master under an order of reference entered December 5th, 1910, on the petition of John E. Dockendorf and answer thereto filed by Edward S. Atwater, Jr., and Theodore M. Crisp, Receivers in Bankruptcy, at the Bankruptcy Court Room, No. 207 Market Street, Newark, N. J., on Tuesday, December 13, 1910, at 2:30 P. M. 92

Present—The Petitioner and G. B. TOWNSEND of EINSTEIN, TOWNSEND and GUTTERMAN, Attorneys. Receivers in person and W. BANTON CRISP, Esq., their attorney.

Mr. Kaufman, of Hays, Hershfield & Wolf, appears specially for general creditors and moves for an adjournment of the hearing for the following reasons: 93

That at a meeting of creditors of this company, held on Wednesday last at the office of Crisp, Randall & Crisp a creditors' committee was appointed and the creditors present at that time expressed their desire that an application be made to the Court for the appointment of one of the creditors as co-Receiver. It is understood that it is the intention of one of the Receivers to resign and an application is to be made for the

94 appointment of a Receiver in the place and instead of the Receiver should he resign, and it seems advisable in view of this fact that the proceeding be adjourned and the application for such adjournment is now made.

Referee: The petitioner and the Receivers not consenting to the adjournment, motion is denied.

Mr. Atwater, one of the Receivers, states that it is immaterial to the Receivers whether the adjournment be had or not.

Referee: Mr. Townsend, for the petitioner, objects to the adjournment. Motion is thereupon denied.

95 JOHN E. DOCKENDORFF, sworn.

Examination by Mr. Townsend:

Q. Mr. Dockendorff, what is your residence?

A. Larchmont, New York.

Q. What is your business address?

A. 20 Broad Street, New York City.

Q. Are you a creditor of Schwab-Kepner Company?

A. I am.

Q. In what amount?

A. About $250,000.

Q. Do you know the exact amount?

96 A. Yes.

Q. What is it?

A. $252,838.54, as of November 29th, exclusive of interest from November 15th, of interest and commissions from November 15th.

Q. Mr. Dockendorff, I hand you agreement, dated May 16th, the parties to which are the Schwab-Kepner Company and John E. Dockendorff. I ask you to identify it.

A. I do.

Q. That's an agreement executed by you?

A. Yes, sir.

Q. Was it delivered to you on or about the day of its date? 97

A. It was.

Q. Are you familiar with the signature of Mr. J. B. Kepner?

A. I am.

Q. Do you know whether on or about May 16th, 1910, he was an officer of the Schwab-Kepner Company?

A. He was President.

Q. Are you familiar with the signature of W. A. Corbett?

A. I am.

Q. Is this his signature?

A. It is. 98

Q. Do you know whether on or about May 16th, 1910 he was an officer of the Schwab-Kepner Company?

A. I do.

Q. What?

A. Secretary.

Q. Was this paper delivered to you by an officer of the Schwab-Kepner Company?

A. It was.

I offer in evidence an agreement between the Schwab-Kepner Company and John E. Dockendorf, dated May 16th, 1910, acknowledged by both parties before a notary public. 99

There being no objection, received in evidence and marked Exhibit P1, December 13, 1910.

It is stipulated that the original shall be marked in evidence and a copy shall be left with the Master in lieu of the original.

Q. I show you another paper purporting to be a certified copy of resolutions of the Schwab-Kepner

100 Company and ask you whether you recognize the signature of the certificate on this paper.

A. I do.

Q. As what?

A. The Secretary of the corporation.

Q. Was this paper delivered to you on or about, or in the month of May, 1910, by an officer of the Schwab-Kepner Company?

A. It was presented with the agreement.

I offer that in evidence.

There being no objection, received in evidence and marked Exhibit P2, December 13, 1910.

101 It is stipulated between counsel that the various documents offered in evidence may be withdrawn by the counsel offering them and copies substituted and left with the Master.

Q. I show you a paper purporting to be a promissory note of the Schwab-Kepner Company, dated May 16th, 1910 for the sum of $50,000.00 and ask you if you recognize it?

A. I do.

Q. Can you identify it from your knowledge of the signatures of the note?

102 A. Signed by the President and the Treasurer of the corporation.

Q. Who are they?

A. Mr. Kepner, President and Mr. Corbett, Treasurer.

Q. When was this delivered to you?

A. On or about May 16th, 1910.

I offer that in evidence.

There being no objections, received in evidence and marked Exhibit P3, December 13, 1910.

Q. Mr. Dockendorf, did you receive other notes 103
of the Schwab-Kepner Company at this same time?

A. I think I did.

Q. Were they the same.

A. Yes.

Q. And executed in the same manner?

A. They were.

Q. And the aggregate of these notes, do you recall?

A. Over $200,000.00, I don't exactly remember.

Q. They were all just the same in form as this?

A. Yes.

Q. I show you a letter dated May 26, 1910, pur- 104
porting to be sent by you and addressed to W. A. Corbett, can you identify that letter?

A. It was written by me.

Q. And signed by you?

A. And signed by me.

Q. On or about the day of its date?

A. Yes.

Q. Do you recognize the signature to the endorsement on the letter?

A. Mr. Corbett's, yes.

Q. And was this delivered back to you so signed by Mr. Corbett on or about the day of its date?

A. It was.

I offer that in evidence. 105

There being no objection, received in evidence and marked Exhibit P4, December 13, 1910.

Q. Mr. Dockendorf, had you an agreement with the Schwab-Kepner Company prior to May 16, 1910 relating to the same subject matter as the agreement that has been offered in evidence and marked Exhibit P1?

A. I have.

106 Q. Do you remember the date of the first such agreement?

A. I think it was September 19th, 1909.

Q. And was there a second one?

A. Yes.

Q. Was there any lapse of time between these three agreements or were they continuous?

A. They were continuous.

Q. Were the terms substantially the same, or similar?

A. They were.

Q. Were each of these prior agreements accompanied by resolutions and notes similar to those
107 which have been introduced in evidence, P2 and P3?

A. They were.

Q. Mr. Dockendorff, were the terms and conditions of the agreement carried out, the present agreement which has been introduced in evidence and marked P1?

A. They were.

Q. Did you receive assignments of accounts receivable from the Schwab-Kepner Company?

A. I did.

Q. Did you make loans to the Schwab-Kepner Company on the security of these assignments of
108 accounts receivable?

A. I did.

Q. How often were such assignments received by you and how often did you make loans?

A. Practically daily, several times a week.

Q. Where were the checks, drafts of the remittances from the debtors under the assigned accounts receivable received?

A. At the office of the Schwab-Kepner Company.

Q. And—

A. By them endorsed to me.

Q. Dated?

A. Dated. 109

Q. In arriving at the figure that you have stated as the indebtedness of the Schwab-Kepner Company to you on November 29th does that include all the goods?

A. It does.

Q. Have you given credit in arriving at that figure for all payments made to you by the Schwab-Kepner Company?

A. I have.

Q. Were all the loans you so made, made on the security of the assigned accounts receivable?

A. They were.

Q. Now, I show you a paper and ask you to identify it and state what it is? 110

A. This is the form used by the Schwab-Kepner Company in assigning accounts. I accepted such accounts as collateral for loans.

Q. This is the blank form?

A. This is the blank form.

Q. That was used for all accounts assigned on this form to you?

A. They were.

Q. On the front of the form what was given?

A. A duplicate of the invoice is mailed to the purchaser of the goods, carbon copy.

Q. And on the back? 111

A. The assignment of the account was executed.

Q. By whom?

A. By the President, Mr. Kepner.

Q. In the name and on behalf of the company?

A. It was in behalf of the company, yes.

I offer this form in evidence.

No objection, received in evidence and marked Exhibit P5, December 13, 1910.

112 Q. Were these accounts so assigned to you numbered serially?

A. They were.

Q. Commencing with No. 1 at the beginning of your dealings with the Schwab-Kepner Company?

A. Yes.

Q. And continuing to what date, serially?

A. Up to May, 1910.

Q. And then?

A. Then beginning over again with a new series, starting with one.

Q. Have you prepared a list of the accounts receivable assigned to you for which you have not
113 received payment?

A. I have.

Q. Is this the list? (Showing witness list.)

A. It is.

Q. The first column of this list consists of numbers. What are they?

A. These are the numbers of the certificates, the number placed on the certificates when the accounts were made.

Q. By certificates you mean the form, a copy of which has just been marked as Exhibit P5?

A. Yes.

Q. And the numbers placed on the certificate you
114 mean the serial numbers?

A. Yes.

Q. And the second column, of names?

A. Purchasers of goods.

Q. The third, the amount?

A. The amount.

Q. Of what?

A. The invoice under that certificate number.

Q. And balance appears after the amount?

A. The balance due on these accounts.

Q. There have been payments made?

A. Yes.

I offer in evidence this list. 115

There being no objection, received in evidence and marked Exhibit P6, December 13, 1910.

Q. Mr. Dockendorff, have you assignments on the form of the Exhibit P5 of all the accounts listed in this statement which has been introduced in evidence as P6?

A. I think the list was made from such assignments.

Q. Who is now the owner of these accounts?

A. I am.

Q. Mr. Dockendorff, have you been advised by the receivers that they have collected or received 116
payment of any of the accounts receivable of the Schwab-Kepner Company?

A. I understand that some collections have been made, yes.

Q. By the receivers?

A. Yes.

Q. Mr. Dockendorff, have you notified the debtors under the accounts receivable assigned to you of the assignment of the accounts?

A. I have not.

Q. And why not?

A. We considered it advisable not to do so because collections might be delayed in doing so. 117

Q. Has your experience been that notification results in the debtors refusing to pay?

A. It has been.

Q. And that would cause loss of interest?

A. It would.

Q. And possibly result in a greater number of delayed accounts?

A. It would.

Q. Mr. Dockendorff, do some of the accounts as-

118 signed to you call for future delivery of merchandise?

A. They do.

Q. And what was done with reference to merchandise that was to be delivered?

A. We would receive warehouse receipts in place of bills of lading, which we endorsed to the Schwab-Kepner Company, in blank, awaiting the maturity of the delivery date to the purchaser.

Q. These receipts were issued by what storage company?

A. Mercantile Warehouse Company.

Q. Of 52-55 Beach Street?

119 A. Yes.

Q. Have you a number of these receipts in your possession?

A. I have.

Q. Are these the receipts you refer to?

A. They are.

Q. They are all endorsed in blank by that company?

A. They are.

Q. And when were they severally delivered to you?

A. During—

Q. I don't mean the date—were they delivered to

120 you in connection with the assignments of the accounts to which the merchandise referred to in these receipts relates?

A. Shortly after the certificates were received in our office. As soon as they had had time to place the goods in warehouse.

Q. Was that the same day?

A. Some times the same day; some times two or three days after.

Q. Have you also some warehouse receipts for other merchandise that was returned by customers to the Schwab-Kepner Company?

A. I have.

121 Q. And all that goods was placed in the warehouse at the time the merchandise was received back from the customer?

A. The goods was placed in the warehouse and the receipts were sent to my office in lieu of the creditor cancelling the account.

Q. And such receipts so received by you were endorsed by the Schwab-Kepner Company in blank?

A. They were.

Q. Were these receipts of the warehouse for returned merchandise delivered to you simultaneously with the invoices?

A. They were. 122

Q. Have you prepared a list of these warehouse receipts?

A. I have.

Q. And is this the list you refer to?

A. It is.

Q. The first column is what?

A. The number of the warehouse receipt that I hold.

Q. The second column, is what?

A. The number of the case called for in that receipt.

Q. And these case numbers appeared on the receipts? 123

A. They did.

Q. And the third column of names is what?

A. The names of the purchasers to whom these goods had been sold by the Schwab-Kepner Company.

Q. Either that or the names of the customers who returned the merchandise?

A. Yes.

124 Q. And the fourth column?

A. The number of the certificate under which the assignment of these accounts was made.

Q. And by certificate you mean the serial number of the account assigned to you?

A. Yes.

I offer in evidence 37 receipts which Mr. Dockendorff has testified are in his possession and ask that a copy of one of them as a sample be received and marked in evidence.

Q. Mr. Dockendorff, are all these receipts the
125 same in form?

A. They are.

Q. And vary only in dates, case numbers and—

A. That's all, I think.

There being no objection, received in evidence and considered Exhibit P7, a copy of one of the receipts being marked in evidence.

Q. Is this list of warehouse receipts, as to which you have testified, prepared from the warehouse receipts themselves?

A. It was prepared from the warehouse re-
126 ceipts themselves by my stenographer.

Q. And all the data on this list except the last mentioned invoice numbers and the names of customers is obtained from the receipts themselves?

A. It is a true copy as far as I know.

I ask that this be marked in evidence.

There being no objection, received in evidence and marked Exhibit P8, December 13, 1910.

Q. Mr. Dockendorff, have you demanded of the

Mercantile Warehouse Company the delivery to you of the goods called for by these receipts? 127

A. I have.

Q. Was the delivery made?

A. It was not.

Q. Was it refused?

A. It was refused.

Q. Is all the merchandise mentioned in these receipts included in the accounts receivable assigned to you?

A. It is.

Q. And is it capable of identification by means of case numbers?

A. It is.

Q. Do the case numbers appear on the accounts assigned to you? 128

A. They do.

Mr. Crisp: The Receivers have received a number of checks from customers of the Schwab-Kepner Company in payment of sundry invoices. These checks covering the invoices set forth in Exhibit P6 can only be determined by comparison with the Receiver's list in this proceeding, a list of the checks received, dates of their receipt, the number of the invoice which they purport to cover so that the comparison may be made between the Receivers' receipts and the so said receivable accounts. 129

Cross examination by Mr. Crisp:

Q. How long have your transactions with the Schwab-Kepner Company been going on, how long have you been loaning them money.

A. A little over two years.

Q. And at the time of the inception of the account, did you have anything in the

130 an agreement such as you have described the agreement of September 19th, 1908 to be?

A. Yes.

Q. And did you make any loans to them otherwise that under that agreement subsequent agreements referred to?

A. Sometimes we would make them, what we called additional loans, that is, when they required more money than they were entitled to under the agreement, under the collateral that they sent up to the office.

Q. And in these cases, what did you take as security, if anything?

131 A. The equity in the stock of merchandise at the various bleacheries.

Q. And in what form did you take these equities over?

A. Under agreement.

Q. Have you copies of these agreements with you?

A. I have.

Q. Do I understand that you are asking for anything under these particular agreements in this proceeding?

A. I think not.

Q. So that this present application is simply
132 to have the Master determine whether or not you have title in and to the accounts assigned to you and if the accounts failed for any purpose, either because the goods were not delivered, or being delivered they were returned, then you are entitled to the goods themselves under certain warehouse receipts representing the goods which were returned, is that correct?

A. That is correct.

Q. That condition of things went on up to last

May as I understand it when you entered into 133
a new agreement with Mr. Kepner?

A. Yes, sir.

Q. Was there any special occasion for a new agreement at that time?

A. Yes.

Q. Kindly state what it was.

A. We desired to protect ourselves in the event we desired to secure further collateral in event that Schwab-Kepner Company required more money than they were entitled to.

Q. And you then made the agreement which you have put in here in evidence as Exhibit P1?

A. Yes.

Q. And all money you have loaned them since 134
then except these special loans you have spoken of were loaned under that agreement?

A. Yes, sir.

Q. And all collateral which you received under and pursuant to that agreement was received in connection with a present loan, made at the time?

A. Yes, sir.

Q. And not for any past obligation of the concern whatsoever?

A. No, sir.

Q. Now, as I understand your operations, when 135
Schwab-Kepner & Company delivered a batch of goods to some company they would make out an invoice on what you call the certificate of indebtedness, that is, on the blank part of that certificate representing the transaction showing the name of the person to whom sold, the quantity of goods, the kind of goods and the price to be paid for them?

A. As a record of the account. That certificate of indebtedness blank was used as a carbon sheet

136 to insure an exact duplicate of the invoice mailed to the purchaser.

Q. And on the back of that, that account is assigned by the Schwab-Kepner Company and sent to you?

A. Yes, sir.

Q. And when it was sent to you, if there was only one of them you would make the advance provided there was the agreement upon that particular account and give the money, and if there were a dozen or more you would take the sum and make the advances as per the agreement of May 16th?

137 A. Yes.

Q. And was that true of each and every one of the transactions referred to in this Schedule P6, each one of the invoices transferred to you?

A. Yes.

Q. In each case?

A. Yes.

Q. And a present consideration, a present advance made upon each of these accounts?

A. Yes.

Q. These invoices were sometimes delivered to you before and you advanced the money on them before the goods themselves were actually deliv-

138 ered to the purchaser?

A. That is true.

Q. Now, suppose the purchaser refused to receive the goods, what then became of this assigned account to you?

A. The account was held in my office waiting for the credit cancelling that particular invoice or waiting for the warehouse receipt for the goods themselves.

Q. As I understand it then an invoice of that kind where accounts failed the goods which that invoice represented were either retained in the

warehouse or received back into a warehouse and a 139
warehouse receipt given to you as collateral in place of the goods itself?

A. Yes, sir.

Q. And was that in consideration for a present consideration and not a past one?

A. It was.

Q. And the warehouse receipts offered in evidence here were received by you under the circumstances which you have just described?

A. Yes, sir.

Q. And they were not given to you for any past indebtedness of any sort except for the indebtedness contracted in the way you have described? 140

A. Yes, sir.

Q. When did you first have any information that the Schwab-Kepner Company was insolvent or any intimation on that subject?

A. I never really had information that they were insolvent until a day or two before the receivers were appointed.

Q. And from whom did you get that information?

A. From the accountants.

Q. In connection with the business which you were doing with Mr. Kepner you had kept an accountant in their place for a number of months, had you not?

A. Yes. 141

Q. From May, last, that is, you kept an accountant there?

A. Yes.

Q. To look after these particular transactions?

A. Yes.

Q. And the first that you ever heard from him, as I understand you, that the concern was insolvent was a day or two before it went into bankruptcy?

A. Yes.

142 Q. And did you have any transactions with them after you received that notice?

A. No.

Q. At the time the agreement of May 16th was made was there any part of your claim against Schwab-Kepner at that time which was unsecured?

A. Not that I know of. I learnt that there were some creditors that may not have been reported to my office but we did not cancel the accounts nor did we pick them out at the time.

Q. Can you state from memory or recollection whether any of the accounts contained in schedule P6 were accounts which were accounts assigned to
143 you prior to May 16th?

A. I could not without seeing them, without seeing the list.

Q. Is it probable that any considerable number were assigned to you prior to May 16th?

A. I don't think so.

Q. You think that all of the accounts assigned in this list were discounted by you in the manner you have described under the agreement of May 16th?

A. The greater part of them. There may be accounts that have failed prior to May there or there may be accounts—I don't think there ought
144 to be any other accounts there because it is six months ago, nearly.

Q. Any of them that are represented by active, going concerns wouldn't have procured an extension of credit?

A. Except where they were sold at long terms, longer than the ordinary terms of sixty days.

Q. What was the usual time?

A. Sixty days.

Q. Do you know of any where credit was given longer than that?

A. Yes.

Q. What was the longest that you can remember? 145
A. Five or six months.
Q. How often did that occur?
A. Not five per cent.
Q. So that the instances of long credit in this list would be very few indeed?
A. Very few.
Q. And naturally these accounts would be of recent date?
A. Yes.
Q. Of recent date, say within sixty or ninety days, or four months?
A. Yes.

Sworn to before me this 13th day of December, 1910. 146

JOHN B. KEPNER, sworn.

By Mr. Townsend:

Q. Mr. Kepner, what is your relation to the Schwab-Kepner Company?
A. President.
Q. From what time?
A. From the beginning of the corporation.
Q. And when was that, about?
A. About three years ago. 147
Q. Three years ago?
A. Prior to that time we had been running as a co-partnership.
Q. And you were president down to the time of the receivership and are now?
A. I am.
Q. Can you identify the agreement which has been offered in evidence as Exhibit P1?
A. I can.

148 Q. Was it executed by you on behalf of the company?

A. It was.

Q. And was it delivered to Mr. Dockendorff?

A. It was.

Q. Were there prior agreements to this of the same general type?

A. There were.

Q. Between the Schwab-Kepner Company and Mr. Dockendorff?

A. Yes.

Q. And they were continuous, one following the other without any intermission?

149 A. They were.

Q. And can you also identify your signature as president of the Schwab-Kepner Company to the note marked in evidence Exhibit P3?

A. I do.

Q. Do you recall that this is one of the notes executed by you on behalf of the company, delivered at the same time?

A. It is.

Q. And do you recall what the aggregate amount of those notes was?

A. Why my impression is that those notes only amounted to $175,000.

150 Q. But you know it was considerable?

A. I do.

Q. Was the agreement marked in evidence P1 and the prior agreement relating to the same subject matter carried out to the extent of the Schwab-Kepner Company assigning its accounts and receiving loans from Mr. Dockendorff on the security of them?

A. It was.

Q. And these assignments of accounts were made how often?

A. Daily.

Q. And the loans how often?

151

A. Practically daily.

Q. And were the loans in every case present loans made at the time of the assignments of the accounts and on the security of them?

A. I will have to ask you to repeat that question in parts, if you will.

Q. The procedure was for you to assign accounts and send a batch to Mr. Dockendorff's office every day?

A. Yes.

Q. And you received loans every day?

A. Yes.

Q. Were the amounts of those loans based upon 152
the amount of the accounts sent down?

A. Yes. Sometimes the loans were in excess of the collateral but they were always based on the collateral.

Q. Now, when you say in excess you mean in excess of the 80% which he was obligated to give you?

A. In excess of our agreement, yes.

Q. Have you knowledge of the indebtedness that existed continuously by Schwab-Kepner Company to Mr. Dockendorff?

A. I have knowledge, yes.

Q. Do you know whether it was a large sum or a small one?

153

A. I know it was a large amount.

Q. Do you know about what sum it was? Do you know whether it was more or less than $200,000 at the time the receivers were appointed in this matter?

A. I know that the amount, it was probably over $200,000.

Q. You have heard all of Mr. Dockendorff's testimony given today, haven't you?

A. I have.

154 Q. Without asking you to testify in any sense to things beyond your knowledge, did you hear him testify to any facts within your knowledge that are in any way inaccurate?

A. No, I don't think there was excepting the amount of the notes. I don't recall anything else that was inaccurate and I don't deny that.

Q. You wouldn't be surprised if notes to the extent of $250,000 were given?

A. No. I wouldn't attempt to deny that. It was just my impression that it amounted to $175,000.

Q. And does that impression come from the fact
155 that $175,000 is the amount stated on page 2 of the Exhibit P1 as the limit of the obligation of Mr. Dockendorff to make loans to you?

A. It may have arisen from that and also from the fact that Mr. Dockendorff did loan us in excess of our collateral loans.

Q. You know that he made loans to you on security of those assigned accounts far in excess of $175,000?

A. I do, yes.

Q. Did you as President of the Schwab-Kepner Company execute the assignments of the accounts to Mr. Dockendorff?

156 A. I did.

Q. Did you assign to Mr. Dockendorff all the accounts receivable in your business during the term of this agreement?

A. Everything was assigned subsequent to May 16th, this last agreement.

Q. Every account credited in your business subsequent to May 16th was assigned to Mr. Dockendorff?

A. Yes.

Q. Prior to that time you don't wish to say that all were assigned?

A. There were some that were not.

157

Q. And were all these assignments made on the blank form which has been introduced in evidence as Exhibit P5?

A. They were.

By Mr. Crisp:

Q. Did you ever say to Mr. Dockendorff at any time or tell him that you were insolvent when you were making these loans?

A. No.

Q. Did you communicate to him in any way that fact that your company was insolvent?

A. I did not.

158

Q. You did so a day or so before the bankruptcy, did you not?

A. No, sir.

Q. Well, did you at any time pledge your accounts to him in contemplation of insolvency or bankruptcy?

A. I did not.

Q. Did you at any time pledge those accounts to him with the intention of giving him a preference over and above your general creditors?

A. I may not be familiar with the meaning of that word. Our intention was to give Mr. Dockendorff security for his loans.

159

Q. Did you intend to make any improper preference as against your general creditors?

A. No, we did not.

Q. And in each instance, as I understand it, when the invoice was transferred to him it was for money advanced to you at the time of the transfer, is that correct?

A. Mr. Townsend asked me a similar question to that and it was somewhat puzzling to me, inasmuch as sometimes the loan was made in advance of the collateral so to speak. The loan, in other words

160 was in excess of the amount of collateral given to Mr. Dockendorff and we sometimes had to make up that collateral later.

Q. Did you at the time of the excess loan have any understanding or agreement that you would provide collateral for it at a later date?

A. I can't recall. In some instances we had such specific agreement, verbally. I don't think anything in writing passed, it was always understood that that would be the case.

Q. What do you mean? How was it understood?

A. Just through our agreement, that was all, and Mr. Dockendorff would sometimes ask me how
161 soon we could make good on the loan.

Q. Make your collateral good?

A. Yes.

Q. Under the agreement of May 16th, as I understand it, your agreement was to keep your collateral at least what per cent. above the loan?

A. Our agreement provided for 80% of 96% of the gross collateral.

Q. In other words you were obliged to keep an excess of collateral of about 20 %?

A. It would really amount to about 25%.

Q. And it was understood by that agreement, you say it was understood that whenever he made
162 you an excess loan for which you didn't give the collateral it was understood that you would supply the collateral at as early a date as possible?

A. I can't say there was a specific agreement to that effect, although it was the general understanding.

Q. Did these transactions take place often?

A. It has been our chronic condition for some time past. I can't say just how far back.

Q. What was the amount of these transactions, I mean where you got money without depositing any collateral at the time?

A. Well, I don't know that I can state the amount 163
of any single operation but I think that they may have amounted to in the aggregate $30,000 or $40,000.

Q. Within what period of time after you got the loan, your excess loan, did you make your collateral security good?

A. I don't think there was any time stipulated.

Q. Well, was it a few days or did you take weeks to do it? Or the following day would you send sufficient collateral to cover the loan for that day and the excess loan of the previous day?

A. No, that hasn't been so lately.

Q. And as I understand your testimony recent 164
excess loans have been made and you haven't deposited collateral to cover those loans?

A. Yes.

Q. But that you have afterwards sent collateral sufficient to cover it by transferring other accounts?

A. I think it has never been made sufficient.

Q. That has never been made good?

A. I think not.

By Mr. Townsend:

Q. Do you understand the technical difference between preference and security?

A. I think that I do from having talked about 165
it, I think that I do.

Q. Mr. Crisp asked you a question in which he used the word preference and you used the word security in your answer, do I understand your answer to be that while you have always intended to secure Mr. Dockendorff you have never intended to give him any preference?

A. We had always made that agreement with Mr. Dockendorff that it was a collateral loan and we gave him security for the money he gave us.

166 Q. In the latter part of the cross examination by Mr. Crisp do I understand you to mean any more by that than that Mr. Dockendorff gave you money in excess of the amount which you were entitled to under the agreement whereby he agreed to loan 80 per cent., isn't that what you meant by your testimony, that Mr. Dockendorff gave you money in excess of the amount you could call upon him for under your agreement?

A. He gave us more than we could demand under our agreement, yes.

Sworn to before me this 13th day of December, 1910. \
167

WILLIAM A. CORBETT, sworn.

By Mr. Townsend:

Q. What is your relation to the Schwab-Kepner Company?

A. Secretary and treasurer.

Q. From what time?

A. Secretary from October 1908, treasurer from April or May, 1910.

Q. And did you hold both offices of secretary and treasurer continuously from the date you mention
168 to the present time?

A. Yes, sir, since May, 1910.

Q. I ask you to identify your signature to the agreement P1 introduced in evidence.

A. That is my signature as secretary.

Q. And your signature to the certificate of resolutions on Exhibit P2?

A. That is also my signature as secretary.

Q. And your signature to the note Exhibit P3?

A. That is my signature as treasurer.

Q. And your signature to the endorsement on Exhibit P4? 169

A. Yes, sir.

Q. Mr. Corbett who were the directors of the Schwab-Kepner Company?

A. At what date?

Q. When were you elected a director first?

A. I don't know.

Q. Who were the directors at the time this agreement was executed?

A. May, 1910?

Q. Yes, Exhibit P1?

A. I don't know. I don't remember.

Q. You were a director?

A. I don't know that I was a director. 170

Q. You are now?

A. Yes, sir.

Q. You were when these resolutions were adopted, were you not, Exhibit P2?

A. I signed that as secretary, not as a director.

Q. You were a director of the company at the time of the filing of the petition in bankruptcy?

A. Yes, sir.

Q. And you are one now?

A. Yes, sir.

Q. You know, do you not, of the assignments made to Mr. Dockendorff as to which the agreements are introduced in evidence? 171

A. I do.

Q. You were treasurer of the company?

A. Since May.

Q. Since that time you have endorsed the checks which came to the office of the Schwab Kepner Company and sent them to Mr. Dockendorff?

A. Well, I don't know that I have, personally; the bookkeeper has.

Q. Wasn't it your obligation to do so?

A. It was until Mr. Dockendorff put in an accountant.

172 Q. Wasn't it your obligation as treasurer of the company under the resolutions introduced here in evidence and under the letter of May 26th which you signed to see that all the checks coming in payment of the accounts assigned to Mr. Dockendorff were endorsed and forwarded to him?

A. Yes, sir, and so I did see that they were done but not necessarily done by me.

Q. You saw that it was done?

A. Yes, sir.

Q. Have you any knowledge as to the amount of the indebtedness of the Schwab-Kepner Company to Mr. Dockendorff during the past six months?

173 A. Approximately.

Q. Approximately how much?

A. Between $200,000 and $250,000.

Q. And do you know, approximately, of your knowledge apart from anything you have heard today at this session, the amount of the indebtedness to Mr. Dockendorff at the time of the filing of the petition?

A. Between $200,000 and $250,000.

Sworn to before me this 13th day of December, 1910.

174 Adjourned to Monday, December 19th, 1910, at 10:30 A. M.

UNITED DISTRICT COURT, 175

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Alleged Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses before Edwin G. Adams, Referee, as Special Master, at the Bankruptcy Court Room, No. 207 Market Street, Newark, New Jersey, on Wednesday, December 21st, 1910, at 10:00 A. M. 176

PRESENT:

G. B. TOWNSEND, Attorney for Petitioner.
Mr. WOLF and Mr. KAUFMAN, Attorneys for Creditors.
G. B. WOODRUFF, Attorney for Receivers.

Mr. Atwater: This matter was left over in order to give Mr. Kaufman who appeared at that time, an opportunity to examine Mr. Dockendorff and conduct a further examination. Mr. Kaufman and Mr. Wolf, who is a member of the firm of 177
Hays, Hershfield & Wolf with which Mr. Kaufman is connected are here this morning and desire to conduct a further examination of Mr. Dockendorff and I would ask that they be allowed to do so.

Mr. Townsend: I don't think that the proceedings were left open at all for the purpose of permitting Mr. Kaufman to make an examination, it was to allow the

178 Receivers to make up their minds, to determine what to do.

Mr. Atwater: I beg the Court's pardon, I was mistaken in the matter, but I would like to have them permitted to make their examination.

JOHN E. DOCKENDORFF, recalled.

By Mr. Wolf:

Q. Mr. Dockendorff, you recall the agreement of May 16th, 1910, which has been offered in evidence and marked Exhibit P1, you recall that?

179 A. I do.

Q. As I understand your testimony, under and pursuant to this agreement you claim that various accounts of the Schwab-Kepner Company were assigned to you?

A. Yes, sir.

Q. Was any notice given to the debtors of these assigned accounts prior to the bankruptcy proceedings of the fact that you claimed to be the assignee?

A. No.

Q. Did you ever have any conversation with any representative of the firm of Schwab-Kepner

180 Company, concerning the fact that notice to the debtors was not to be given?

Q. No. I don't understand your question. You mean relative to entering into the agreement?

Q. Did you ever discuss with any representative of Schwab-Kepner Company the fact that you were not to give notice to the debtors of Schwab-Kepner Company of the assignment of the accounts to you?

A. That was one of the conditions under which the agreements were drawn up.

Q. Was that subject discussed between you and

any representative of the Schwab-Kepner Company? 181

A. It was naturally discussed at the time of the agreement to arrive at the terms of the agreement executed.

Q. With which one or more of the representatives of the Schwab-Kepner Company was the matter discussed?

A. I think only with Mr. Kepner.

Q. Did you ever talk over the proposed contract between yourself and the Schwab-Kepner Company with any other representative of Schwab-Kepner Company than Mr. Kepner?

A. At the time of making the agreement? 182

Q. Or at any time prior to the making of the agreement?

A. No.

Q. So that he, on behalf of the Schwab-Kepner Company conducted solely the transactions for that company with you?

A. With me, yes.

Q. Now, will you please tell us what was said between you and Mr. Kepner as to your not giving notice to the debtors of the fact that the accounts had been assigned to you? A. I can't recall anything definite. My methods of business don't require the notification of the purchaser. 183

Q. Will you please tell us, Mr. Dockendorff, what was said between you and Mr. Kepner?

A. I can't recall, because that subject came up over two years ago, two years and a half ago and it was something never considered important by me, because I do business of this nature only without notification.

Mr. Wolf: I move to strike out the answer on the ground that it is not responsive.

184 Master: The last part of the answer will be stricken out.

Master: Try to confine your answers to the question. So far, this morning, you have gone into matters outside of those to which the question is directed. In other words when you were asked for a conversation or whether you had one you have discussed with the questioner at some length the fact that you must have had a conversation. You will save time if you will make your answers responsive.

185 Q. Now, Mr. Dockendorff, will you kindly answer that question and tell me in words or in substance the conversation you had with Mr. Kepner on that particular phase of the agreement?

A. I can't recall more than I have stated.

Q. Can you recall anything that was said between you and Mr. Kepner on that subject, and if so, please state it.

A. We agreed to accept accounts receivable without notification to the purchaser.

Q. Prior to your agreeing to that can't you tell us what was said?

A. I can't recall anything definitely.

186 Q. Did Mr. Kepner ask you whether or not you insisted upon notifying the debtors?

A. What is that?

Q. Did Mr. Kepner, before he signed the contract, when he began negotiations with you or at the time of the signing, ask you whether or not you, as a condition of entering into the agreement, insisted on notifying the debtors?

A. Yes.

Q. What did you say in answer to that?

A. That we did not.

Q. What did Mr. Kepner say in answer to that?

A. That that was satisfactory to him.

Q. Is it a fact that at this time you told Mr. Kepner that you wanted to notify the debtors and he demurred and you finally agreed not to do so? 187
A. No.

Q. Well, now, have you told us everything that you can recall that passed between you and Mr. Kepner on the subject of notifying the debtors?

A. Yes.

Q. Mr. Dockendorff, you testified at the last session that the amount of your indebtedness agreed upon was approximately $250,000?

A. Yes.

Q. Are you able to say to-day the exact amount for which you claim to be a creditor of the Schwab-Kepner Company. 188

A. Yes, sir.

Q. What is the exact amount?

A. I will have to refer to a paper. $252,838.51, as of November 29th, exclusive of interest since November 15th.

Q. Now, as security for that you claim to be the assignee of certain outstanding accounts of the Schwab-Kepner Company?

A. Yes.

Q. Is there any other class of security that you hold as security for this debt?

A. I have.

Q. What is the nature of this security? 189

A. Certain agreements referring to the equity of the stocks at the bleacheries with whom Schwab-Kepner did business.

Q. What is the nature of that equity?

A. The nature?

Q. Yes; what is the claim of the other person, which gives rise to an equity which is transferred to you?

A. Schwab-Kepner had raised loans on mercban-

190 dise from their banks, on the same merchandise with the bleacheries.

Q. In other words, you understood that the banks claimed a lien on this merchandise in the bleacheries?

A. Yes.

Q. And they transferred to you as security for your debt the equity over and above these liens?

A. Yes.

Q. Did you understand that there were any other liens against the goods at the bleacheries other than the liens of the banks?

A. No.

191 Q. In what bleacheries were the goods that were assigned to you?

A. The Cold Spring Bleachery, the Standard Bleachery, the Sales Bleachery and the Providence Bleachery.

Q. Was that the subject of a written agreement?

A. It was.

Q. What date was that agreement entered into?

A. Some time in May, of this year.

Q. May, of 1910?

A. Yes, sir.

Q. Was that entered into at the time that Ex-
192 hibit P1 agreement of May 16th, 1910, was entered into?

A. About the same time.

Q. What was the purpose of entering into the second agreement referring to the goods in the bleacheries?

A. For the purpose of exceeding the loans that we were obligated to give Schwab-Kepner under the agreement referring to the accounts receivable.

Q. Was anything said between you and Mr. Kepner as to the name of the person who held title to the goods left at the bleacheries?

A. I knew that there were loans made by the banks. 193

Q. Was anything said between you and Mr. Kepner as to the corporation or individual in whose name these goods stood at the bleacheries?

A. No.

Q. What was your understanding, that they were in the name of the Schwab-Kepner Company?

A. Yes.

Q. In other words, then, the bleacheries held the goods for Schwab-Kepner Company?

A. Yes.

Q. And so far as the bleacheries knew the Schwab-Kepner Company were the owners of this particular merchandise? 194

A. Subject to the claim of the banks.

Q. Did you ever notify the bleacheries that you were the assignee of the equity in the merchandise over and above the loans?

A. No.

Q. Did the mills ever send any communication or make any verbal statement to you that so far as the equity was concerned that they held these goods for your account?

A. No.

Q. Did you do anything so far as these goods at the bleacheries were concerned beyond entering into the agreement between yourself and the Schwab-Kepner Company of May 1910? 195

A. Not till after the receivers were appointed.

Q. Not until after the receivership?

A. Yes.

Q. And by the receivership you refer to the receivership in the bankruptcy proceedings?

A. Yes.

Q. I call your attention, Mr. Dockendorff to Exhibit P2 of December 13th, 1910, by which Wm. A. Corbett is authorized to accept an appointment

196 as agent and representative of John E. Dockendorff to receive payment of the accounts receivable assigned pursuant to the agreement of May 16th, 1910?

A. Yes.

Q. Mr. Corbett was the secretary of the Schwab-Kepner Company, was he not?

A. Yes.

Q. And he is designated under this Exhibit P2 of December 13th, 1910, to collect the accounts receivable?

A. Yes.

Q. In other words he was the secretary of the
197 Schwab-Kepner Company and he was also your agent for the purpose of making the collections and transferring them over to you?

A. Yes.

Q. Do you know who the treasurer of the Schwab-Kepner Company was?

A. Mr. Corbett.

Q. So that as treasurer of the corporation of Schwab-Kepner Company you knew that his duties on behalf of the Schwab-Kepner Company were to collect the outstanding accounts?

A. Yes.

Q. And he occupied, and was to do precisely
198 the same thing for you?

A. Yes.

Mr. Wolf: I will ask Mr. Dockendorff to produce the agreement referring to the transfer of the equity in the merchandise at the mills.

Mr. Townsend: We are not asking for anything in this proceeding under that agreement.

Q. Mr. Dockendorff you have a statement show-

ing the times at which you advanced the various moneys to the Schwab-Kepner Company? 199

A. Yes, sir.

Q. Is that here?

A. A matter of bookkeeping.

Q. Is that here?

A. No.

Q. Have you the checks here showing the money paid by you to the Schwab-Kepner Company?

A. No.

Q. When you paid money to the Schwab-Kepner Company was it always by check?

A. Always by check except a few cases where charges were made against the account.

Q. And those checks were to the order of the Schwab-Kepner Company? 200

A. To the order of the Schwab-Kepner Company.

Q. After May 16th, 1910, can you tell us approximately how much you advanced in cash to the Schwab-Kepner Company?

A. Several hundred thousand.

Q. Can you fix it any more definitely than that?

A. Perhaps eight or nine hundred, perhaps more

Q. How many different checks or advances were made to them during that period?

A. Almost daily.

Q. On May 16th, 1910, what was the condition of the Schwab-Kepner Company account with you? 201

A. They were owing something around $150,000 or $175,000.

Q. And what security did you have for that?

A. Accounts receivable.

Q. Any other securities?

A. No.

Q. Subsequent to May 16th, 1910, beyond the accounts receivable and the transfer of the equity in the merchandise at the mills to you, did you have any other security?

A. No.

202 Q. Did you have any other guaranty of any kind?

A. No.

Q. Have you a list of the accounts which you held on May 16th, 1910, as security for the $150,000 that was then due you?

A. I have no list today, now.

Q. Will you kindly produce that at the next session and will you also produce a list of the moneys advanced by you to the Schwab-Kepner Company?

Mr. Townsend: I may say that I shall cer-
203 tainly direct Mr. Dockendorff not to produce such a list it would take at least two weeks to get it up.

Q. Mr. Dockendorff, did I understand you to say in your previous testimony that on May 16th, 1910, you took about $200,000 of notes of the Schwab-Kepner Company?

A. Yes, sir.

Q. Did that more than cover the indebtedness to you?

A. That was for the purpose of holding the necessary notes for the advances to be made.

Q. Thereafter?

204 A. Thereafter.

Q. So that the taking of the notes on the 16th of May, 1910, had no connection with the indebtedness then due you?

A. No.

Q. And was to cover indebtedness and advances thereafter to be made?

A. Yes.

Q. Were all of the notes taken by you on May 16th, 1910, executed by the Schwab-Kepner Company?

A. Yes.

Q. Were they all payable on demand? 205

A. Yes.

Q. And to your order?

A. Yes.

Q. Now, was the amount of those notes which you thus took correctly stated at $200,000?

A. I think it is $250,000.

Q. And for the $250,000 of demand notes to your order, given to you on the 16th of May, 1910, the Schwab-Kepner Company was not really indebted to or obligated to you in any amount whatsoever, is that correct?

A. The notes were given with the agreement.

Q. Is it a fact that on May 16th, 1910, you had 206
in your possession the $250,000 of demand notes of the Schwab-Kepner Company duly executed to your own order as against which you hadn't advanced any money whatsoever?

A. Yes.

Q. You have testified, as I understand it, that you gave the Schwab-Kepner Company a check almost daily?

A. Yes.

Q. Where was that check issued, at your office or at any other place?

A. My office.

Q. Where is your office?

A. 20 Broad Street, New York City. 207

Q. Where is the place of business of the Schwab-Kepner Company?

A. Leonard Street.

Q. Did you have any supervision or control of the outstanding accounts other than having Mr. Corbett, the secretary and treasurer of the Schwab-Kepner Company, designated as your agent to turn over the proceeds of the outstanding accounts to you?

A. Yes.

208 Q. What supervision or control did you have?

A. I employed a chartered accountant under agreement with Mr. Kepner, who was to assist with the bookkeeping and supervise the bookkeeping.

Q. Was there any other supervision?

A. No.

Q. What was the name of the chartered accountant?

A. Cyrus Williams.

Q. How often did Mr. Williams examine the books of the Schwab-Kepner Company and report to you?

A. There were several reports.

209 Q. When did Mr. Williams first start in to examine the books after the agreement of May 16th 1910, or was it before?

A. After.

Q. Prior to May 16th, 1910, did you have any control or supervision over the Schwab-Kepner Company affairs?

A. No.

Q. Prior to that time had Mr. Corbett been designated as your agent and representative to turn over the proceeds of the assigned accounts to you?

A. No, I had another agent.

Q. Who was the other agent that you had?

210 A. Mr. Curran.

Q. What was his connection with the Schwab-Kepner Company?

A. I think he was the Secretary.

Q. And then after May 16th, 1910, as you understand it, Mr. Corbett became the Secretary and Treasurer and he was thereupon designated as your agent?

A. Yes.

Q. Did you ever pay Mr. Corbett any salary or compensation for acting as your agent?

A. No.

Q. Did you ever agree to?

A. No. 211

Q. So that his services were purely voluntary, not to be paid for?

A. Yes.

Q. How did you deliver the checks that you signed at your 20 Broad Street office to the office of the Schwab-Kepner Company?

A. By messenger.

Q. Did they send for the checks or did you send them to them?

A. They sent for them sometimes and sometimes we sent to them.

Q. Which occurred in the majority of instances, 212
did they send for the checks?

A. Yes.

Q. And when you say it was delivered by messenger you mean it was delivered to the messenger which they sent?

A. Yes.

Q. Now, when they sent this messenger did they send any written letter or anything at all to you?

A. Sometimes they would send letters.

Q. How would you know the amount which you would advance to the Schwab-Kepner Company on, let us see, the 17th of May, 1910?

A. How would I know?

Q. Yes, how would that be designated? 213

A. It was an account current.

Q. On the 17th of May, 1910, can you tell us how much you advanced?

A. No.

Q. On any particular day can you tell us how much you advanced?

A. No.

Q. Let us assume that you advanced on the 17th of May, $50,000 to the Schwab-Kepner Company, how would that amount be fixed?

A. By the amount of collateral that we would hold.

214 Q. How would you obtain the collateral?

A. It would be assigned and sent to my office.

Q. By whom?

A. By somebody from the Schwab-Kepner Company.

Q. How would it be sent by mail or messenger?

A. By messenger.

Q. Did the messenger that took away the checks bring in the assignment of accounts?

A. Sometimes.

Q. And it also sometimes happened that he didn't do it?

A. Sometimes.

215 Q. Have you a record on your books showing the date of the receipt by you of the different outstanding accounts?

A. Yes.

Q. And is there also a record on your books showing the advance or loan made by you against each specific outstanding account?

A. I made no loans against specific outstanding accounts.

Q. They were made generally against all of the accounts?

A. They were made generally against all the accounts.

216 Q. Now, what was the date of the last loan made by you to the Schwab-Kepner Company?

A. The Friday before the receivership was appointed. I think the 24th or 25th.

Q. And after that did you receive any outstanding accounts, assignments?

A. After that date?

Q. Yes.

A. Probably the following day, a few.

Q. How many?

A. A very small amount. I don't remember.

Q. How much was that loan or advance?

A. It was for collateral I knew they had at the time we made the last loan. 217

Q. How much was that loan or advance?

A. 87,500.

Q. Was that made generally against the account?

A. Yes.

Q. Were any specific accounts assigned to you for that advance? As security for that advance?

A. No.

Q. So that when you made that advance of 87,500 you received no new collateral or any collateral which you did not then hold?

A. I expected new collateral to come.

Q. The next day? 218

A. Yes.

Q. Was that the general method that the loan was made by you and the collateral expected in a day or so?

A. Not always.

Q. What was the usual practice?

A. We would, as I say, make advances against the collateral we held or against the collateral we knew was in the office of the Schwab-Kepner Company to be received on that day, a few hours after or the next day.

Q. Did it ever happen that a week intervened before you got the collateral? 219

A. No.

Q. Three days?

A. No.

Q. Two days?

A. No, because the collateral received two days after would only go to make up the amount of collateral that might be required for us to have a margin over the 80.

Q. As I understand your testimony it did frequently happen, however, that the collateral came in the day after the loan was made?

A. In some—

220 Q. Did it frequently happen that it came in later in the same day that the loan was made?

A. No, I say the collateral would come after we had made a fresh advance.

Master: Would it sometimes come later in the same day?

A. Yes, sir, it would.

Q. Won't you please describe the method by which you made advances and secured collateral? Give it in as much detail as you can.

A. Schwab-Kepner would ask for certain money which we would give them if they were entitled to
221 it. We were not obligated to give more than 80% of the accounts that we had in our office that we considered good. We did sometimes exceed that percentage. We expected all collateral that was shipped by Schwab-Kepner, according to the agreement.

Q. In other words you felt that they ought to assign to you all the outstanding accounts that accrued?

A. All.

Q. And you would make advances according to their request?

A. Yes.

222 Q. Notwithstanding the fact that the accounts hadn't been physically assigned to you so long as you knew they had been created?

A. We had them all assigned to us.

Q. Under what agreement?

A. Of May 16th, with the exception of what might have been at the office on the day that they were asking for more money.

Q. On which day, May 16th, 1910?

A. On any specific day that they might ask for more money.

Q. You claim then that under Exhibit P1 all of

the accounts that were created in their business 223
were assigned to you?

A. And actually were assigned to me and in my possession.

Q. Were they assigned by any other instrument in writing than this exhibit?

A. Yes.

Q. Before the advance was made?

A. Not before the advance was made.

Q. After the advance was made you would get an assignment on the back of the Schwab-Kepner invoices—

A. No.

Master: What would you get after the 224
advance was made?

A. We would get more collateral. We had a running account.

Q. What do you mean by more collateral?

A. More of these certificates of indebtedness.

Q. You mean these notes?

A. No.

Q. You mean this Exhibit P5?

A. Yes.

Q. In other words after the advances were made by you you would get more collateral in the shape of certificate of indebtedness in the form of Ex- 225
hibit P5?

A. No.

Q. Now, will you please tell the Referee what you did get after the loans were made by you that you didn't have before?

A. We made no specific loans against any specific collateral. We had an account current with Schwab-Kepner Company, we had a running account. Schwab-Kepner Company assigned to us all their shipments, daily. We were obligated to advance to Schwab-Kepner Company up to 80% of all

227 the accounts in our possession that we accepted as collateral for loans. If any of those accounts were rejected, we had the right to reject any accounts that we did not consider were good, we always had the privilege of making advances higher than 80% of the total amount of collateral in our possession so that we maintained a running account with these people. You see we would give them money if we felt that we were safe in giving it. Each day we would receive collateral, each day we had more collateral than the actual loan because of the fact that we had some accounts that we had rejected because they were too old, because we had a 20% margin on
228 all the collateral and we sometimes exceeded the 80%.

Master: What do you mean by saying that you sometimes rejected accounts because they were too old, you mean that you didn't consider them in calculating the 80%?

A. We didn't consider them but still held them as security according to the terms of my agreement.

Q. Mr. Dockendorff, who acted as the representative of the Schwab-Kepner Company in this daily obtaining of the advances from you, Mr. Kepner or Mr. Corbett, or who?

228 A. As representative for me?

Q. For the Schwab-Kepner Company?

A. Either Mr. Kepner or Mr. Corbett would ask for money.

Q. Now, when he asked for money tell me, what, in substance, he would say?

A. We need $10,000, today.

Q. Is that all?

A. We have got so much collateral here today, can you give us $10,000 today, and I would say, "I don't know, I will look up the account and figure out the amount of collateral that you have there as

well," and then I would state yes or no; yes, I can give it, or no, I can't give it. 229

Q. And if you said yes, you would give them a check?

A. I would give them a check.

Q. Assuming that you said yes, you can, would you get any assignments in the form of P5 before you issued that check or would that come after the check.

A. It was immaterial.

Q. Well, suppose you don't discuss the legal proposition, tell us the facts.

A. We would advance the check against the collateral we held in the office. 230

Question read.

A. Sometimes before and sometimes after.

Q. Now, you testified that you had the right to eliminate old or unsatisfactory accounts?

A. Yes.

Q. Do you recall any specific instances where that was done?

A. No.

Q. Do you recall ever having had a conversation with Mr. Kepner or Mr. Corbett concerning the rejection by you of the accounts of any firm for a very large amount of money?

A. No, that was a matter of routine. 231

Q. Do you remember having any such conversation?

A. Yes, sometimes, as to the credit rating of the concern.

Q. Is there any concern whose accounts have been assigned to you for a very large amount of money concerning which you have had any talk with any representative of the Schwab-Kepner Company?

A. Yes.

232 Q. What firm?

A. I don't recall any names, just now. That is a matter of routine left for the clerks to do.

Q. What clerk in your office would have charge of that?

A. Mr. Sedman.

Q. What is his full name?

A. I don't remember.

Q. Would any other clerk in your office have charge of it?

A. My ledger clerks, one of my ledger clerks would also know about the collateral. Only as to credit.

233 Q. Do you recall having any talk with Mr. Kepner or Mr. Corbett concerning the accounts of a company which had been assigned to you and in which the Schwab-Kepner Company or some of the individual stockholders of that company were largely interested?

A. Yes.

Q. What was the name?

A. American Shirt Company.

Q. Did you ever reject their accounts?

A. We would not advance on them, no.

Q. Did you at any time have assigned to you any accounts of the American Shirt Company?

234 A. Yes.

Q. When?

A. Right along.

Q. And to what extent?

A. I should say six or eight thousand.

Q. Any other firm or corporation in which the Schwab-Kepner people were largely interested where you rejected the accounts besides the American Shirt Company?

A. No, you ask largely interested?

Q. Well, interested in any way?

A. I know of no concern in which Schwab-Kep-

ner was interested other than the concerns that 235
they were financing.

Q. That is what I mean. What were the concerns they were financing?

A. I know of none other than the American Shirt Company.

Q. Was there an American Fur Company?

A. I don't know.

Q. Do you know of any other firm or corporation in which they were interested as financiers or any other way besides the American Shirt Company?

A. No.

Q. You say you rejected the accounts of the 236
American Shirt Company?

A. For the purpose of considering them in the 80% loan.

Q. Do you still claim to be the assignee of the American Shirt Company accounts?

A. Yes.

Q. And to the extent of six or eight thousand dollars?

A. Yes.

Q. Did you ever make any advances against those accounts?

A. I never made advances against any specific accounts.

Q. When did you reject the American Shirt ac- 237
counts and state that they were not satisfactory and would not be accepted?

A. I don't recall the date.

Q. With whom did you have that talk?

A. Mr. Kepner.

Q. What was said.

A. That we did not care to consider the American Shirt Company accounts for advances for any great amount, for any greater amount than we had.

Q. Did Mr. Kepner ask you why?

A. I presume so.

238 Q. Well, did he?

A. Yes.

Q. What did he say and what did you say on the subject?

A. That the credit rating was not satisfactory to us.

Q. Was that all that was said?

A. That was sufficient.

Q. Was that all that was said?

A. I presume so.

Q. Was it?

A. I think so.

Q. Who did you understand were the owners
239 of the American Shirt Company?

A. I did not know.

Q. These accounts of the American Shirt Company were accounts that purported to be accounts of the Schwab-Kepner Company against the American Shirt Company which had been assigned to you?

A. Yes.

Q. Had the American Shirt Company ever failed to pay any of these outstanding accounts at the time when they become due?

A. I think so.

Q. Did it ever occur that the American Shirt
240 Company paid any of these accounts?

A. I think their arrangement was that they were to assign their own accounts to Schwab-Kepner in payment.

Q. The accounts of the American Shirt Company were assigned to the Schwab-Kepner Company?

A. Yes.

Q. Who told you that that was the arrangement?

A. Mr. Kepner.

Q. At this interview?

A. Yes.

Q. When you rejected the American Shirt Com- 241
pany accounts?

A. Yes.

Q. Why didn't you state that when I asked you for the conversation for that day?

A. I didn't think it necessary.

Q. Will you kindly tell me everything stated at that interview, necessary or unnecessary?

A. I don't recall anything else.

Q. When Mr. Kepner told you that all the accounts of the American Shirt Company had been assigned to the Schwab-Kepner Company did you say anything in reply to that?

A. I don't think so.

242

Q. Did you ever receive any money from either the Schwab-Kepner Company or the American Shirt Company purporting to be a payment of the indebtedness due from the American Shirt Company to the Schwab-Kepner Company?

A. No.

Q. So that every dollar of the accounts of the American Shirt Company which you claim now to be assigned to you remains unpaid and you never collected a dollar of the outstanding accounts?

A. Of those that are open, no.

Q. Have you any that were closed?

A. I think so. You are asking me details that 243
are really very annoying in that I can't keep track of all these little details.

Q. When money came into the Schwab-Kepner Company in payment of the outstanding accounts due from any of the customers of the Schwab-Kepner Company how did you receive the payments of those moneys?

A. By receiving the original checks endorsed to me.

Q. Was that always done?

A. Always done.

244 Q. Endorsed by Mr. Corbett?

A. Either by Mr. Corbett or Mr. Kepner who ever had the power to do so.

Q. Under Exhibit P2 Mr. Corbett had the sole power, did he not?

A. As my agent.

Q. As your agent to endorse those checks?

A. Yes.

Q. So that subsequent to May 16th, 1910, all customers' checks delivered to you should have been endorsed by the Schwab-Kepner Company through Mr. Corbett?

A. Yes.

245 Q. To your own order?

A. Yes.

Q. Subsequent to May 16th, did you receive any checks of the Schwab-Kepner Company?

A. Yes.

Q. For what?

A. For any charges that may have been made or any adjustments of remittance sheets or any incidentals of the running of the business.

Q. Did you receive any larger checks, checks for a large amount of money?

A. I don't think so.

Q. Therefore if you received any money in pay-
246 ment of the outstanding accounts of the American Shirt Company they would have been, if this course of business which you have testified to was adhered to, you should have received the checks of the American Shirt Company?

A. If they paid by check, yes.

Q. Did you ever receive such a check?

A. I don't recall.

Q. Can you recall the largest amount that you ever at any one time had of accounts of the American Shirt Company?

A. I cannot tell except in a general way, six or 247
eight or ten thousand.

Q. Did it ever run up as high as $50,000?

A. No.

Q. Either before or after May 16th, 1910?

A. No, I don't think it ever ran over ten or twelve.

Q. Do your books show the receipt by you of the different checks to the credit of the Schwab-Kepner account?

A. Yes.

Q. And give the names of the makers of the checks which you received?

A. Yes, I think so.

Q. When you received the check of a customer of 248
the Schwab-Kepner Company that, of course, was immediately posted in your books?

A. Yes.

Q. And this outstanding account which you had of this particular customer was, of course, cancelled or marked as having been paid?

A. Yes.

Q. Are you sure that you received checks of the customers?

A. Yes.

Q. You didn't receive the checks of the Schwab-Kepner Company as representing payments made 249
to the Schwab-Kepner Company by the customers?

A. No.

Q. Now, you testified at the previous session that you made loans in advance of the outstanding accounts having been created and that in those instances you insisted on the goods being deposited in the warehouse and the warehouse receipt was issued to the Schwab-Kepner Company and by them signed in blank and transferred to you, is that correct?

A. Yes.

250 Q. Now, to what extent was that done?

A. Comparatively a very small amount.

Q. Can you fix it any more definitely than that?

A. I should say around $35,000.

Q. At the time of the failure of the Schwab-Kepner Company, how much of the merchandise was in storage?

A. About $35,000 or $38,000.

Q. In the name of the Schwab-Kepner Company?

A. Yes.

Q. And you had made advances on that proportion of non-existing accounts of the Schwab-Kep-
251 ner Company?

A. On actual accounts.

Q. On that proportion of accounts which would only come into existence when the merchandise which was thus stored should be delivered to the purchaser of the merchandise?

A. No, actual accounts for future delivery.

Q. The deliveries had not yet been made under the accounts, had they?

A. No.

Q. In other words, you advanced against an order for merchandise given to the Schwab-Kepner Company and the merchandise was placed in
252 storage?

A. No, a sale made by Schwab-Kepner where the customer asked the Schwab-Kepner Company to keep the goods for future delivery.

A. And those goods were placed in storage?

A. In storage, yes.

Q. And a warehouse receipt issued to Schwab-Kepner Company?

A. Yes.

Q. And they endorsed that receipt and delivered it to you?

A. Yes.

Q. Can you tell us the amount you advanced against that merchandise? 253

A. I never made specific loans to Schwab-Kepner Company on any specific collateral.

Q. Can you tell when you received these warehouse receipts?

A. During the course of business, during the last six months.

Q. Can you give dates?

A. During the last six months.

Q. Have you made any effort to get these goods out of the storage warehouse since the receivership?

A. Yes.

Q. Have you taken them out? 254

A. No.

Q. What has been done?

A. I am asking the Court to give me permission to have these goods delivered to the parties to whom they belong.

Sworn to before me this 21st day of December, 1910.

Adjourned to Friday, December 23rd, 1910, at 10:00 A. M.

255

256 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Alleged Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses before Edwin G. Adams, Referee, as Special Master,
257 at No. 20 Broad Street, New York City, on Friday, December 23rd, 1910, at 11:00 A. M.

PRESENT:

Mr. WOLF and Mr. KAUFMAN, Attorneys for Creditors.
G. B. TOWNSEND, Attorney for Petitioner.
G. B. WOODRUFF, Attorney for Receivers.

JOHN E. DOCKENDORFF, recalled.

By Mr. Townsend:

Q. Mr. Dockendorff, have you had prepared
258 another list of the assigned accounts of the Schwab-Kepner Company which you hold?

A. I have.

Q. And that list, as I understand it, is arranged in alphabetical order?

A. Yes, sir.

Q. Does this list which you refer to contain exactly the same items as that list which has already been introduced in evidence as Exhibit P6?

A. As P6, yes.

Q. And the only difference between this list and

the one introduced in evidence as Exhibit P6 is the change in the order of the accounts? 259

A. It is. That is the only change.

Q. This is the list you refer to (showing witness paper)?

A. Yes.

Mr. Townsend: I offer this in evidence and suggest that it be marked Exhibit P6 and be received in substitution of the list which was offered and marked in evidence as P6 on December 13th, 1910.

There being no objection, received in evidence and marked Exhibit P6, December 23rd, 1910. 260

Q. Now, Mr. Dockendorff, have you prepared an account current of cash between the Schwab-Kepner Company and yourself?

A. I have.

Q. And is this the account to which you refer?

A. It is.

Q. Please state what this list shows?

A. It contains all the moneys given Schwab-Kepner Company, daily.

Q. By you?

A. By me, since the beginning of our business relations in September, 1908, and all the remittances received from the Schwab-Kepner Company since October, 1908, applying to the accounts pledged. 261

Q. The left hand column is what?

A. The left hand column is the cash items.

Q. The left hand column is the money given by you to the Schwab-Kepner Company?

A. Yes.

Q. And have you in your office the original checks for all these items?

A. I have.

262 Q. Does it contain any items not represented by checks given by you to Schwab-Kepner Company?

A. Very few.

Q. And those are what?

A. Only since June of this year for interest and commission and slight charges for adjustment of protest fees or checks returned.

Q. The right hand column, I understand, is a summary or statement of the remittances of customers' checks sent to you each day from the Schwab-Kepner Company?

A. Yes.

Q. And the balance stated at the end of the
263 account $252,838.54, is what?

A. The exact balance due me as testified previously.

Q. The right hand column of remittances received by you is made up from what data in your office?

A. From the vouchers that accompanied the remittance sheets received from the Schwab-Kepner Company and made up at their office.

Q. And you have them all in your office?

A. I can show the vouchers for any item, every item.

Q. On both sides of this account?

264 A. On both sides of that account.

Q. This account is complete, you had no other financial transactions with the Schwab-Kepner Company except as shown here?

A. I had no other.

Account offered in evidence.

There being no objection, received in evidence and marked Exhibit P9, December 23rd, 1910.

Q. Mr. Dockendorff, when accounts receivable were received at your office from the Schwab-Kep-

ner Company day by day, they were accompanied 265
by what paper?

A. By schedules.

Q. And on these schedules the accounts were listed?

A. They were listed as to number of the certificate of indebtedness, name of the purchaser and amount of the invoice.

Q. And total?

A. And total.

Q. Have you all these schedules in your office?

A. I have.

Q. Have you also all the assignments which accompanied the schedules? 266

A. I have.

Q. These schedules as you call them were prepared in the office of the Schwab-Kepner Company?

A. They were.

Q. And sent to you?

A. They were.

Q. Have you prepared a statement of all these assigned accounts receivable that were sent to you?

A. I have.

Q. And the data for it was obtained from—

A. The original schedules received from the Schwab-Kepner Company. 267

Q. Is this the statement to which you refer?

A. It is.

Offered in evidence.

There being no objection, received in evidence and marked Exhibit P10, December 23rd, 1910.

Sworn to before me this 23rd day of December, 1910.

268 CYRUS WILLIAMS, sworn.

By Mr. Townsend:

Q. Where do you reside?

A. New Brittain, Staten Island.

Q. And at present by whom are you employed?

A. By the receivers of the Schwab-Kepner Company.

Q. During what dates were you in the employ of the Schwab-Kepner Company?

A. I was employed originally, began service, July 1st.

Q. 1910?

269 A. 1910. After a conference on the Friday and Saturday previous between Mr. Kepner, Mr. Dockendorff and myself. I have never regarded myself strictly in the employ of the Schwab-Kepner Company.

Q. Please state what your duties were to be under the instructions you received jointly from Mr. Dockendorff and Mr. Kepner or severally by each of them and actually what you did in the Schwab-Kepner Company.

Mr. Wolf: I object; let him testify as to what Mr. Kepner and Mr. Dockendorff said.

270 Q. You testified that on Friday and Saturday previous to the date of your entry into the relations with the Schwab-Kepner Company you had a conference with Mr. Kepner and Mr. Dockendorff. Please state what was said to you by them as to your employment and the duties that you were to have in connection with the Schwab-Kepner Company books and affairs.

A. I didn't make any note of what occurred so I can only speak from the impression made in my mind and remaining there since. I don't recall that Mr. Kepner was present on Friday, he may or may

not have been but he was on Saturday. At one of 271
these conferences Mr. Dockendorff explained without mentioning any names at that time that he was loaning very considerable sums of money to a concern which afterwards was named as the Schwab-Kepner Company.

Q. What I want is what was told you as to your duties rather than—

A. I don't know that I can answer that.

Q. What were you to do up there according to the statements of Mr. Dockendorff? What were the statements made to you as to what you were to do, were you told that you were to be in charge of the books?

272

Mr. Wolf: I object; leading.

Objection sustained.

Q. I want you to understand, Mr. Williams, what is want—

A. I think I do understand. He was loaning large sums of money and was—I am speaking of the impression in my mind and remaining there as to what Mr. Dockendorff said—that the relations as respecting the correctness with which the business was done had been and were unsatisfactory and he desired to have someone who would represent him in regard to the relations and would also 273
be of vital assistance to the Schwab-Kepner Company. That is the gist of the thing in a few words. I understood by that that the man who went there should take charge of the collections, should after a while, as I believed myself capable of doing, take charge of the extending of credits and, in a general way, while not to be burdened with the details of the work, to help in the general management of the business.

Q. And what did you do in the office of the Schwab-Kepner Company—or, let me ask you first,

274 your employment continued from July 5th until—

A. Until the receiver took charge.

Q. And you were at the office every day?

A. Daily.

Q. And what did you do?

A. Well, I began by making an examination of the accounts receivable with a view to ascertaining what items could be collected. They had a large number of accounts receivable which apparently were long overdue and had not been disposed of or adjusted in any way. Having done this and conducted an examination of these accounts assisted by Mr. Jones, a bookkeeper of ability who could
275 give all day to it where I could not, but who consulted with and reported to me every time he found anything that made it necessary, on the 10th of August I took up the matter of the credits. Before that it was a matter of the accounts receivable and familiarizing myself with the business.

Q. Were you the head of the accounting force in that office?

A. I can't say that I was. I was entitled to instruct but at the same time I was not given direct supervision of the whole thing. I was not responsible for the details of the business, yet at the same time any method which I criticised after discussion
276 with Mr. Kepner in which I gave my views and convinced him were changed to meet it and my suggestions adopted.

Q. Was there an account on the books of the Schwab-Kepner Company with John E. Dockendorff?

A. There was.

Q. What does it show?

A. This account in bulk, that is to say, while it don't show the entry of the transactions daily, represents in bulk the advances made by Mr. Dockendorff to the Schwab-Kepner Company and since

or about June it also shows commissions and interest charged by him to the Schwab-Kepner Company, and on the other side of the account it shows the remittances or deposits made by the Schwab-Kepner Company with Mr. Dockendorff to the credit of their account. 277

Q. And it shows a balance of how much in his favor?

A. It shows here a balance, taking into consideration an estimated amount of interest and commission of $252,786.19.

Q. Would you be willing to say that that is absolutely accurate?

A. I would not. I have every reason to believe that it is not. 278

Q. But it is accurate within how much?

A. It is accurate within an amount which might be termed immaterial for general purposes, not as an accounting between parties but as representing substantially the indebtedness.

Q. Would you say that $1,000 or $500—

A. The probabilities are that this is correct within $1,000, roughly speaking.

Q. Mr. Williams, you were aware were you, while in the office of the Schwab-Kepner Company, of the relations with Mr. Dockendorff?

A. As their transactions showed and as the conversations at which I was present showed. I never saw any documentary evidence. 279

Q. I don't mean what their contracts were. Were you aware that the accounts were assigned?

A. I was.

Q. Were you aware that the remittances from customers were sent to Mr. Dockendorff's office?

A. Yes.

Q. And that checks were received from Mr. Dockendorff's office?

A. I was. These were matters of daily transactions.

280 Q. Did you see the check that came from customers?

A. Almost always.

Q. And can you say that these checks were all sent down to Mr. Dockendorff's office?

A. I believe they were, every one of them. I make that answer in this way. I was not the actual sender of the checks but the entries on the books there show that and in conformity with the other entries they must of necessity express the truth.

Q. Are there any entries in the Schwab-Kepner Company books showing deposits to its own banks or showing that it kept for its own account remit-
281 tances from its customers?

A. Yes, a cash book has been in use there since last July or August, and on one side it shows the receipts from the customers and on the other I believe it shows the deposit for the day with Mr. Dockendorff's office.

Q. Yes, but does it show deposits in banks of the Schwab-Kepner Company of any checks received from its customers?

A. I think we may say there were two, aggregating less than $10.00.

Q. That is during the period that you were there?

282 A. Yes. I don't recall any others.

Q. What was the reason for those two?

A. They were amounts refunded from some parties that made purchases.

Q. They were not straight sales, they didn't represent a sale of merchandise?

A. No. All items springing from sales were deposited with Mr. Dockendorff, all receipts.

Q. They were endorsed to his order?

A. Yes.

Q. How does that endorsement read?

A. I think—a man may sometimes be mistaken

in the wording, I think it simply said pay to the 283
order of John E. Dockendorff.

Q. And signed Schwab-Kepner Company?

A. Yes.

Q. You saw that recently? Every day?

A. Yes.

Q. And you know that the checks were endorsed in that way to Mr. Dockendorff's office?

A. I do.

Q. How many bank accounts did the Schwab-Kepner Company have, five or six?

A. Well, not including their account with Mr. Dockendorff they had an account with the Chatham National, a bank at Amityville, I can't remember 284
the name I think First National, The Slater Trust Company at Pawtucket and the Westminster Bank at Providence. They also had an account which was dormant nearly all the time with the Carnegie Trust Company and with the Bank of North America at Philadelphia.

Q. Do you know of the deposits that were made in these banks?

A. Oh, I saw the entries and very frequently I saw the actual deposits prepared.

Q. Were any deposits made in these banks, except Mr. Dockendorf's checks, to the order of the Schwab-Kepner Company?

A. Absolutely no. There may have been notes 285
discounted at the Bank of North America.

Q. Other than the proceeds of loans obtained from the banks the deposits were solely represented by Mr. Dockendorff's checks?

A. That is correct.

Q. And these check of Mr. Dockendorff's were drawn to the order of Schwab-Kepner?

A. And endorsed by them to the bank with whom they were deposited.

286 By Mr. Wolf:

Q. I understand that you are a certified public accountant?

A. I am.

Q. What is your firm?

A. I am not in the employ of any firm or a member of any firm.

Q. You are doing business by yourself?

A. I prefer, when I can secure a position that suits me, I prefer active business.

Q. As I understand your testimony your were employed on the 5th of July, 1910?

A. My duties began on that date.

287 Q. You were employed a few days prior thereto?

A. My conversations began, I think, on the Friday prior to the 5th.

Q. That is, really the week of the 5th?

A. Yes, the 5th was on Tuesday.

Q. Prior to that time had you known any member of the Schwab-Kepner Company?

A. Incidentally I had known Mr. Schwab, I had met Mr. Schwab and Mr. Kepner some five years ago.

Q. Before that?

A. I think it was in the early part of 1905. I am only stating to the best of my recollection.

288 There is nothing to fix the date in my mind.

Q. Was your employment with the Schwab-Kepner Company brought about through any representative of the Schwab-Kepner Company or Mr. Dockendorff?

A. Through Mr. Dockendorff.

Q. Will you tell us how it was that you were introduced or saw Mr. Dockendorff about your employment in the Schwab-Kepner Company?

A. I don't know that I grasp that, will you repeat it?

Q. When did Mr. Dockendorff first communicate

with you concerning your employment with the Schwab-Kepner Company? 289

A. The first time that he mentioned any name was when Mr. Kepner was present on Saturday.

Q. When was the first time he spoke about your being employed by him in any firm?

A. Oh, I came in contact with Mr. Dockendorff just once, possibly a month before that in reply to an advertisement which he inserted in one of the papers under the head of business opportunity.

Q. And the nature of that advertisement was what?

A. Evidently for the position with the Schwab Kepner Company.

Q. What did the advertisement state? 290

A. I don't recall that.

Q. In substance can you tell?

A. I would not undertake to do so.

Q. Can you state that it simply said that Mr. Dockendorff wanted to obtain the services of an expert accountant or bookkeeper?

A. No, it didn't speak in that way. If it had I wouldn't have answered it. It read more in the way, that while a man shall be familiar with accounts he preferred a man with good business experience.

Q. In answer to that advertisement you met Mr. Dockendorff? 291

A. Yes, about the end of May.

Q. During June you negotiated with him?

A. No, Mr. Dockendorff selected another candidate who remained there for a while and on his severing his relations I was sent for.

Q. This was in May that you first saw Mr. Dockendorff?

A. Yes.

Q. At that time did he tell you what he wanted?

A. He did not mention any names and it was only on generalities.

292 Q. Then he sent for you in June or rather July?

A. Yes, or he telephoned me, I don't remember now.

Q. And you came to see Mr. Dockendorff?

A. I did.

Q. And as I understand it you saw him first alone?

A. I did.

Q. And had a talk with him.

A. Yes.

Q. And then the next day Mr. Kepner joined the interview?

A. Yes.

293 Q. And then you had a conference with both Mr. Kepner and Mr. Dockendorff?

A. That is correct.

Q. Resulting in your employment?

A. That is correct

Q. Now, at the interview that you had with Mr. Dockendorff alone, will you please state what Mr. Dockendorff said to you and what you said to Mr. Dockendorff?

A. I wouldn't undertake to do it because there was nothing that made any fixed lodgment in my mind. If you have any questions to ask I will answer them, but I couldn't undertake that because

294 I might be wide of the mark.

Q. Can you tell us the substance?

A. Somewhat. As to what my experience had been in business; I may say if my recollection is correct Mr. Dockendorff looked up my references at the time my first application was made, I think. I wouldn't say that positively.

Q. Did Mr. Dockendorff say anything to you as to what he wanted you to do?

A. Oh, yes.

Q. Will you please tell us that?

A. Just what I have already recited.

Q. Will you recite it again? 295

A. That while, primarily my duties would be respecting the methods of business and accounts between the Schwab-Kepner Company and John E. Dockendorff, he wanted a man who could undertake larger duties and be of vital importance to the Schwab-Kepner Company. Their collections had not been properly looked after and their system of credits had been very poor. I had had experience as a credit man, very considerable, and for that reason I presume I was able to undertake to fulfill the duties.

Q. Is that all that was said at this interview?

A. I wouldn't say that.

Q. Is that all that you remember? 296

A. All I recall in substance.

Q. Where did this interview take place?

A. In the office of Mr. Dockendorff.

Q. And the interview between you and Mr. Dockendorff and Mr. Kepner, where did that take place?

A. At the same place.

Q. Now, will you tell us the substance of what was said either by you, Mr. Dockendorff or Mr. Kepner at that interview?

A. I can't say anything further than I have. We spoke more of details but the substance of it is what I have already told you. 297

Q. Then on the 5th of July, 1910, you entered into your employment?

A. I did.

Q. At this interview was it stated how much salary you were to receive?

A. Yes.

Q. Was it stated who was to pay it?

A. I have a letter which is not with me in which Mr. Dockendorff employed me—I haven't got it here—my impression is, however, I don't know

298 whether I got it at the time, I think I did, I probably had it fully understood how and when I was to be paid. My understanding is and I think it was agreed at that time that I was to be paid by Mr. Dockendorff but the amount was to be charged to the Schwab-Kepner account.

Q. You mean as between Schwab-Kepner Company and Mr. Dockendorff?

A. He was to pay me and charge the amount to the Schwab-Kepner Company.

Q. In whose employ were you, in the employ of the Schwab-Kepner Company or of Mr. Dockendorff?

299 A. I will leave it to someone better qualified in the law than I am to answer that.

Q. What was said as to that?

A. Nothing more than I have already stated. It was a mutual agreement entered into by three men believed to be to the advantage of all.

Mr. Wolf: Mr. Townsend, will you produce a copy of that letter please.

Q. Is this the letter you refer to? (Showing witness paper.)

A. Yes, I think it bears date July 5th. It was the early morning of July 5th before I took up my

300 services I came in here and that letter was given to me as embracing the arrangements we had arrived at.

Mr. Wolff: I will read it into the record:

"July 5th, 1910.

"Cyrus Williams, Esq.,
New York City.

Dear Sir:—

I hereby engage your services to act as my representative in the office of the Schwab-

Kepner Company till further notice. Your 301
salary will be at the rate of $3,000 per annum payable monthly. I believe that there is a good opening for you if you can make yourself valuable to the Schwab-Kepner Company by co-operating with its president for the purpose of mapping out its business policies and financial arrangements. It will largely depend upon your ability how far you may go in this matter. I have instructed Mr. N. D. Hardy to turn over copy of the letter addressed to the Schwab-Kepner Company under date of May 17th, 1910, as well as the letter given him under date of 302
June 1st showing the conditions under which I am at present financing the affairs of the Schwab-Kepner Company.

Yours very truly,

(Signed) John E. Dockendorff."

Q. Is that correct?

A. Yes, sir.

Q. And in the lower left-hand corner JED-NBC?

A. Yes.

Mr. Wolf: Is it conceded, Mr. Townsend, that this letter was signed and sent to Mr. Williams by Mr. Dockendorff?

303
Mr. Townsend: It is conceded that it was signed by Mr. Dockendorff and that Mr. Williams received it.

Mr. Wolf: And that Mr. Dockendorff sent it or caused it to be sent?

Mr. Townsend: Yes.

Q. Mr. Williams, this letter of July 5th, 1910, that I have just read into the record is a letter received by you from Mr. Dockendorff and about which you have just testified?

A. I believe it was handed to me personally by Mr. Dockendorff.

304 Q. And it was handed to you on or about the date it bears date?

A. It was handed to me on that date.

Q. Now, it says in there that your salary would be at the rate of $3,000 per annum, payable monthly?

A. Yes.

Q. Who paid you and how were you paid the $3,000 per annum?

A. Mr. Dockendorff sent over to the Flatbush Trust Company where I keep my account, I presume he sent his check, to the credit of my account there until the end of November, at which time I
305 got a check here, myself. Prior to that I think all the payments were made by deposit.

Q. Was that done at your order?

A. At my request.

Q. To Mr. Dockendorff?

A. Yes.

Q. Where did you live at the time?

A. I lived where I do now. I had been a resident of Flatbush.

Q. That is located in Brooklyn, the Flatbush Trust?

A. In Brooklyn.

Q. Was the check of $250 per month sent to the
306 bank on or about the first of the month?

A. Oh, I couldn't say that. It probably was, within a day or two.

Q. Now, when you went to the place of business of the Schwab-Kepner Company and undertook the performance of your duties on July 5th, 1910, what were the first things that you did?

A. I first had a long talk with Mr. Kepner in his private office.

Q. Will you please tell us what was said between you and Mr. Kepner at that time?

A. I am afraid you are taxing my memory with

more than it will bear. The principal thing that 307
rests on my mind is that I told Mr. Kepner I could only successfully handle the duties and be of use to him if he would give me his confidence without reserve as to such matter as I was interested in and I cited my reasons for it and it was just a general talk in order that I might as far as possible get acquainted with their methods of business.

Q. Can you give us a brief statement of the reasons you gave Mr. Kepner why he should give you his absolute confidence?

A. Simply that I couldn't act as between Mr. Dockendorff and Mr. Kepner in fairness to themselves and myself unless I know exactly what the 308
facts might be as they came up from time to time.

Q. And did Mr. Kepner agree with that?

A. In a measure. He said it was rather a large request to make from a man of whom he knew but little.

Q. Now, did you, after having this preliminary talk did you make any inspection or examination of the books of the Schwab-Kepner Company?

A. I didn't go there in my capacity as a public accountant. I went there just as any other business man to fulfill those obligations. It was fully understood that the actual daily transactions would take up the bulk of my time until I became 309
familiar, thoroughly familiar with the business.

Q. Give us an idea, as detailed as possible, of what you did.

A. My first effort was to find out why, if there was any good reason, why accounts apparently overdue were not paid, to collect such of them as were collectable and to find out why the others were not. In other words to realize on the liquid assets or those that apparently were liquid.

Q. And that was the first thing to which you addressed your attention?

310 A. Yes. Incidentally, I would say, that looking the first day at the account of John E. Dockendorff, I noticed a discrepancy of upwards of $20,000; it may have been $30,000.

Q. $30,000.

A. Yes, and I instructed the accountant, Mr. Jones, to make an investigation and discover where it lay.

Q. Who was Jones?

A. He was a man employed in the meantime.

Q. Was he employed by you or had he previously been employed by the Schwab-Kepner Company?

A. No, he was employed by Mr. Dockendorff,
311 at my suggestion. When I learned some of the things as to the condition of their account without being in their office, I made up my mind that the quicker it was put into businesslike shape the better and as I couldn't give it all my own time, it was necessary that somebody should. It was merely a coincidence that Mr. Dockendorff had been applied to by him before and it was at my express request because I realized the necessity of having efficient help

Q. When did Mr. Jones actually enter upon the performance of his duties with the Schwab-Kepner Company?

312 A. Mr. Dockendorff, at my suggestion, on Saturday—I said if we wanted the man we wanted him as quickly as we could get him and he sent word to Mr. Jones and when I came Monday morning, Mr. Jones walked in.

Q. That was on the 5th of July?

A. Yes, and he went with me and I took him right up there and started him to work.

Q. So that you and Mr. Jones entered into employment simultaneously?

A. Yes.

Q. Now, you testified, as I understood your testi-

mony, that a large amount of the accounts were 313
overdue and you first addressed your attention to
them to see why they hadn't been collected?

A. They appeared to be overdue.

Q. What was the amount of the accounts that appeared to be overdue?

A. That I can't state. Fifty or sixty thousand.

Q. What is your best recollection, that it was over $50,000?

A. I would say it was approximately over $60,000. I will not make a hard and fast statement.

Q. Can you state it as your best recollection that it was over $60,000?

A. Yes. 314

Q. Please tell us what investigation you made and what you found out?

A. I started Mr. Jones to work to trace each individual item that was open. I found out why it was not paid and I also had the man who was the collector of the concern go to the places of business and find out what they had to say in regard to it. I found that very loose methods had prevailed. We would find a case or two cases or five barrels of goods apparently unpaid for by one house and, on consulting the records on or about that same day of the sales book, the stock book, to see if that would throw any light on it, 315
we would discover that those identical goods had been bought and delivered and paid for by another concern.

Q. Did that cover the entire sixty thousand?

A. A very large amount of it.

Q. Would you say two-thirds of it?

A. I would not be—

Q. Well, approximately?

A. Yes, I will say approximately more than that.

Q. In other words, more than $40,000 of the

316 $60,000 that were apparently overdue were not really overdue because the accounts were fictitious?

A. I wouldn't say fictitious.

Q. They didn't exist?

A. The indebtedness did not exist.

Q. And to that extent the accounts were fictitious?

A. I won't say that, because it gives a wrong impression.

Q. The fact is that they were not *bona fide* accounts.

A. There was no *bona fide* indebtedness.

317 Q. There was no indebtedness?

A. There was no indebtedness. They probably were made at the time and the inference is that at the time the goods failed of delivery and refused or cancelled the proper credits were not entered.

Q. And the goods were returned and sold to somebody else?

A. Yes. Of course, we could only cause credits to be issued by Mr. Corbett the Treasurer of the company on presenting the evidence to him that the credits were properly due and that made it necessary to search these records.

Q. So that was $40,000 of the approximately
318 $60,000. What did you find with respect to the remaining $20,000?

A. A very large number of them were bad.

Q. You mean uncollectable?

A. Yes, I mean uncollectable. Uncollectable for various reasons. The report which I made of the condition as shown by the books and records of the Schwab-Kepner Company at the creditors' meeting gives those accounts and in the face of those that are doubtful, I think it also states the dates that the accounts bear and reasons as far as I was able to get at them.

Q. Now, I am trying to go back to the condi- 319
tion as you found it in July of 1910.

A. The amounts I have stated are conservative amounts. Don't be surprised if you find that they are considerably larger.

Q. I am coming to the remaining one-third now.

A. I am citing the amounts more as an illustration than as actual figures.

Q. Now, coming to the other one-third, I would like to place on the record in more definite shape the reasons why those accounts were not collectable?

A. If you will allow me to look at that report, I may be able to give you a clearer idea than 320
from memory. In Schedule F of that report at the creditors' meeting of the condition of the Schwab-Kepner Company as to the accounts receivable you will find a heading there, "Accounts Receivable, November 29th, 1910, very doubtful."

Q. And what is the total?

A. $6,658.30. And you will also find in Schedule G of the same report under the heading of "Considered worthless for the reasons assigned."

Q. What is the total of that?

A. $39,339.

Q. Why were they considered worthless?

A. Oh, a multiplicity of reasons. 321

Q. Give us some of them, give us most of the reasons.

A. Well, here is $1,149, a case of bankruptcy, nothing received out of the account. Another case of $606, gone out of business, parties can't be found. $197.75 factory closed under judgment for rent under laws of State of Pennsylvania. $1,065, bankruptcy case, considered hopeless. $143.31, same thing. $380.50, $525.29, $480.55, $148.81, $683.21, $549.99, $116.16, $833.79, $2,989.26, $531.50, the same thing. I am reading only the large amounts.

322 Here is a case of $3,154.88 which had been settled in November, 1909, by the payment of $1,000, there was a dispute between the parties the nature of which I have forgotten.

Q. That is still open on the books?

A. It showed that still open on the books. Here is a case of bankruptcy in which after acceptance of 27½ cents on the dollar in full settlement, a balance remained of $1,699.21, another case, after acceptance of 10 cents a balance of $1,962.20, another case of $541.42, bankruptcy, parties can't be found; $1,966.42 bankruptcy case considered as to collectability hopeless; $2,101.96, $63.75, $431.09,
323 $346.00, $197.57, $775.75.

Q. That totals $39,000?

Mr. Townsend: While all this is very pertinent in inquiring into the condition of the Schwab-Kepner Company, I don't see that it has anything to do with this matter. All these accounts which were overdue in Schwab-Kepner were overdue in this office as well and they were not the collateral on which the loans were made.

A. Yes.

Q. Now, you have read these facts from the re-
324 port made by you to the Receivers?

A. That is correct.

Q. Did the same conditions exist in July, 1910?

A. As to the major number of items, yes, not as to all.

Q. Having read the $39,000 of accounts uncollectable by reason of failure, etc., does that refresh your recollection so that you are able to state any more definitely the amount of accounts that appear on the Schwab-Kepner Company as being open whereas they should have been reduced, the goods having been returned?

A. I hesitate to name any sum for the reason 325
that they were disposed of from time to time as Mr. Jones secured the evidence and brought it to my notice. If I considered it conclusive I sent it to Mr. Corbett to have proper credits issued and only when I considered that his search had been so thorough that it didn't admit of any doubt that they were so issued. It was done from time to time as his work proceeded.

Q. In addition to the items you have read they total approximately $50,000?

A. No, I said more than $60,000, but we disposed of a very large amount by causing credits to be issued which should have been issued prior. 326

Q. After you addressed yourself to that state of affairs what did you do next?

A. I took up the question of the live accounts.

Q. The accounts *bona fide?*

A. Yes.

Q. What did you do with reference to that?

A. Wrote letters, sent out collectors, used all the arts and artifices necessary to get money from delinquent debtors.

Q. With what success?

A. I had no fault to find with it.

Q. After that what did you do?

A. As to some of the delinquent debtors they 327
thought I was too vigorous. On the 10th of August I took up the matter of making credits.

Q. The work you have just testified about consumed your time from the 5th of July?

A. They are the daily duties of the business.

Q. From the 5th of July till about the 10th of August?

A. Yes.

Q. When you discovered the condition of affairs from the outstanding accounts did you have any talk with Mr. Kepner or Mr. Dockendorff concerning that?

328 A. Why, yes. We didn't sit down to discuss the matter in whole, it was merely as from time to time reasons were given. For instance, Mr. Dockendorff sent up a schedule of overdue items and wanted to know why they were not collected and I return—it to him with reasons such as I have given you here.

Q. Did you ever tell Mr. Dockendorff at these conversations as they went along about the fact that such a large amount of accounts apparently open and uncollected, that there was really no indebtedness existing?

A. I didn't need to tell him that. He knew it 329 before I did.

Q. How did he know that?

A. From his records here. They were not collected but charged back as overdues.

Q. By Mr. Dockendorff to the Schwab-Kepner Company?

A. I assume that he did.

Q. Did you ever have any talk with Mr. Dockendorff on that subject?

A. Yes, I undoubtedly did, but I don't remember it at any particular time.

Q. What was the substance of any one or more of the talks?

330 A. Simply Mr. Dockendorff wanted to know why out of an apparently large sum of overdue accounts so little money was being collected and I simply explained just as I have to you today at this time.

Q. That conversation occurred between the 5th of July and the 10th of August, 1910, some time between those dates?

A. At different intervals along there, I couldn't name any dates.

Q. What did Mr. Dockendorff say when you told him of the fact that such a large amount of

accounts apparently overdue were not in fact 331
overdue because the indebtedness didn't exist?

A. I don't know just what he said it was something as to the loose way in which the business was conducted.

Q. And those were the accounts against which he had advanced money?

A. You are asking me now about something prior to my connection with the business and which I can only say that I assume that he did. I wouldn't say that he did positively.

Q. Now, on August 10th you undertook a larger field for your activities?

A. I did.

Q. What form did your activities take on and after that time? 332

A. I covered all the ground we spoke of and in addition to that getting acquainted with the financial standing of the parties to whom the Schwab Kepner Company were making sales so as to determine to what amount and in what sums I might be justified in allowing credit.

Q. You took care of the credits?

A. I took care of the credits.

Q. Did anything occur of any note in your checking of the credits?

A. I really don't know just what you are aiming at. I am not trying to evade you. 333

Q. Do you recall any accounts that came up for specific discussion between you and Mr. Kepner and Mr. Beckendorff?

A. Two or three times there may have been when I didn't feel justified in extending credits in the sum that Mr. Kepner believed I should.

Q. Can you name those firms?

Mr. Townsend: I object, immaterial.

Objection overruled.

Recess.

After Recess:

CYRUS WILLIAMS, examination resumed:

By Mr. Wolf:

Q. After you had completed your investigation of the outstanding accounts or during the continuance of your investigation did you have any talk with either Mr. Kepner or Mr. Deckendorff concerning the financial condition of the Schwab-Kepner Company?

A. You will have to make that more specific I don't know just what answer to make to that.

Q. What don't you understand about it?

A. Why, it covers such a broad field. I don't know just what to answer.

Q. Did you have any talks with either of them concerning the financial status of the Schwab-Kepner Company?

A. Why, Mr. Kepner from time to time as these various accounts were investigated wherever the amount involved was a great deal was in a general way informed. I don't know of any specific instances, they frequently were, I don't know to what extent.

Q. Most of them?

A. No, frequently and as I explained before, Mr. Deckendorff had sometimes, I don't know how often, sent up lists of overdue accounts and I had simply sent back explanations on them, but these, under the agreement, were considered overdue as between Mr. Deckendorff and the Schwab-Kepner Company as well. He will tell you what his relations were in respect to that.

Q. You informed Mr. Deckendorff in writing, then, concerning the overdue accounts? Did you ever report to him verbally?

A. I may have done so.

Q. Did you ever have any talk during this period of your investigation? 337

A. You are talking now between July 5th and August 10th?

Q. Yes, with Mr. Dockendorff or Mr. Kepner concerning the solvency or insolvency of the Schwab-Kepner Company?

A. I don't know that Mr. Kepner and myself had any talk. Yes, we did. You see it is a little difficult to answer for this reason. With Mr. Kepner I was in daily contact. To pin something down to a special date or conversation unless a matter of moment I can't do. With Mr. Dockendorff I don't know how often I came to his office. 338

Q. Let us take Mr. Dockendorff first. Did you have any talk with him during this period concerning the solvency or insolvency of the Schwab-Kepner Company?

A. I probably did.

Q. What was said on that subject?

A. Of course it would dissipate the assets of the concern considerable, to what extent I couldn't tell.

Q. You mean the reduction from the assets of the outstanding accounts which the Schwab-Kepner figured as live assets and which you counted as worthless?

A. Yes. 339

Q. Did you during this period say in words or in substance to Mr. Dockendorff that you thought that there was a fair possibility that the Schwab-Kepner Company was insolvent?

A. I think I did.

Q. When did you tell him that?

A. Why, sometime within a few days after my being there I told him that from the outlook as I could see it it would look to me as though they were going to probably wipe out their surplus and make a big hole in their capital.

340 Q. They were going to be insolvent?

A. They might be.

Q. When did you tell him that?

A. Sometime between these two periods.

Q. July 5th or August 10th?

A. Yes.

Q. Can't you repeat as nearly as you can either words or substance what you said to Mr. Dockendorff on that occasion and what he said to you?

A. I can only tell you this, that Mr. Dockendorff disagreed with me entirely.

Q. Tell us what he said to you and what you said to him?

341 A. I can't do that.

A. As near as you can.

A. Simply I know that as a credit man and an accountant I am inclined to ask myself what is the worst that can happen, I am a pessimist, that is my natural inclination. Another man may look at the bright side—

Mr. Wolf: I move to strike that out.

Motion allowed.

Q. I only want your best recollection as to what you said.

A. I can't undertake to repeat that.

342 Q. Give us the substance of it.

A. Just as I have stated. I didn't believe that they had enough surplus and I wouldn't be at all surprised if their capital was impaired and might be entirely wiped out.

Q. You said that to Mr. Dockendorff?

A. In substance, yes. I didn't say it on one day or two days, but at some time

Q. What did Mr. Dockendorff, in substance, say to you when you said that to him?

A. He didn't agree with me.

Q. Did he tell you why?

A. He simply thought I looked too much on the dark side of the question. 343

Q. Tell us what Mr. Dockendorff said?

A. I can't undertake to answer that.

Referee: Did he say anything more than that he didn't agree with you?

A. At some time, whether it was between those periods, those dates, or afterwards it was explained by Mr. Kepner and Mr. Dockendorff that Mr. Kepner had what were believed to be very favorable contracts for the supply of goods out of which they expected to derive considerable profit. Whether it was between those two dates or not I can't recall. 344 I can't fix it positively.

Q. Now, you say there was a Mr. Jones employed there?

A. Yes.

Q. What is his full name?

A. I don't know that I can tell you.

Q. Do you know where he is employed now?

A. I do not.

Q. What were his duties at the Schwab-Kepner Company?

A. To act under my instructions in the investigation of these accounts and also to try and improve the bookkeeping.

Q. Did you ever draw a trial balance sheet at the 345 Schwab-Kepner Company?

A. I certainly did.

Q. How often?

A. Every month.

Q. Take the trial balance sheet for July, 1910, did you see that?

A. No, sir, I may have or I may not have.

Q. July 31st, 1910, you say that?

A. Yes, sir.

Q. What do they show?

A. I have it.

346 Q. Will you please produce it?

A. This is from the general ledger and gives in bulk what the other books give in detail.

By Mr. Woodruff:

Q. How often were those made?

A. Every month.

Q. At the end of the month?

A. Yes, the last day of each month, as of that date.

By Mr. Wolf:

Q. Now, will you please produce the trial balance for August, 1910?

347 A. I haven't it here.

Q. Where is that?

A. I presume in the safe of the Schwab-Kepner Company.

Q. For the 31st, 1910, when did you see that?

A. This is it.

Q. The paper I now hold in my hand?

A. Yes.

Q. When did you see that?

A. Probably on the first or second of August.

Q. The trial balance for August 31st, when did you see that?

348 A. It was two or three or four days after the end of the month.

Q. When for September?

A. The same way, within a few days.

Q. And October?

A. The same thing.

Q. Did you check up or determine the accuracy of the trial balance sheet in any way?

A. Two or three times when they had clerical errors I helped to discover them and did discover them.

Q. Did you check up to see whether any of the

items were improperly or erroneously entered on 349
the trial balance sheet?

A. No, sir, I was not supposed to.

Q. For instance, the merchandise item is entered at a certain figure, did you take any steps to see whether or not the merchandise item was inflated?

A. No, sir.

Q. Now, after August 10th, after your activities had been broadened as you have testified did you have any further talks with either Mr Kepner or Mr. Dockendorff concerning the financial status of the Schwab-Kepner Company?

A. Just as I have explained.

Q. Did you have any further talks with Mr. 350
Dockendorff after your activities had broadened?

A. From time to time, yes.

Q. What was the substance of those conversations?

A. Just about what I have explained to you.

Q. In other words after your activities broadened you continued to say that you thought the capital of the Schwab-Kepner Company had been wiped out and that there was a deficit and Mr. Dockendorff continued to deny it?

A. I said just as I replied before. I was sure there was no surplus and I believed their capital was considerably impaired if not entirely wiped 351
out. I believed that there was a deficit.

Q. You thought there was a deficit?

A. Yes.

Q. What led you to come to that belief?

A. In the first place as we look down here—

Q. You are looking at what paper?

A. Trial balance sheet of the general ledger under date of July 30th, 1910. We find that the bulk of the items on the upper part of the sheet relate to the expenses of business, then we come to an item of J. P. Kepner $22,000. I had no reason

352 to believe that that was an item which he could supply; also we come to notes receivable, $48,800, that amount included two notes of Mr. Kepner somewhat in excess of $42,000. I think and I couldn't see from any evidence at hand that Mr. Kepner was able to discharge that obligation in the near future. That would account for something pretty close to $65,000 which while an asset in name is not an asset in reality. These accounts receivable I have explained fully about.

Q. How much did you figure then as the sum of the accounts receivable as shown between the statement and the actual facts?

353 A. Why just taking it on the theory that $25,000 one way or the other is of no consequence it would be $100,000 or more as compared with the item when I went there.

Q. In other words the accounts showed that the accounts on that trial balance sheet were inflated?

A. Already we had written off a considerable number because of our investigations which we found were not assets. Compared with the day I went there this is.

Referee: Mr. Wolf wants you to compare it with the trial balance sheet.

354 A. I couldn't state that.

Q. In your coming to the belief to which you testified concerning the affairs of the Schwab-Kepner Company how much did you eliminate for the inflation of the outstanding accounts?

A. As I said, in a business of this magnitude an error of calculation of even $25,000 wouldn't cut any figure.

Q. What did you eliminate?

A. Speaking in round figures I said $100,000.

Q. You eliminated then $160,000 of assets from

that statement on the two items you have already 355
mentioned?

A. About that.

Q. Now, go ahead.

A. The item of merchandise there—

Mr. Townsend: The witness is testifying to his mental processes here which seems to me is not the object of this hearing.

A. I would like to explain here that any conversations or communications that I had with Mr. Dockendorff were fragmentary and brought up by some happening at the time and it is very difficult to fix any specific date or time as to when we had 356
a conversation.

Objection overruled.

A. There is an item here of merchandise showing $378,000. Now their merchandise had been, speaking in a broad sense, pledged for loans had been since before I came in connection with them and taking the amounts of the loans and the margin necessary I could hardly reach any other conclusion than that that amount was larger than represented by the actual stock as it would be by an inventory.

A. By how much?

357

A. At that time—I can't state the exact figure, I would have to—I see I have a change here, an item in the margin here of $286,000.

Q. When was that made by you?

A. Some time in the early part of August.

Q. When you saw the trial balance sheet?

A. I wouldn't say it was the second, third or tenth. Sometime in August.

Q. What is that, that item of $286,000?

A. That merely is the amount which I assumed that the merchandise would probably represent.

358 Q. In other words, an inflation?

A. Well, I put down the lowest figure.

Q. A difference of how much?

A. Of say about $90,000. That is about all.

Q. In other words you eliminated of the schedule's assets $250,000 of assets from that trial balance sheet?

A. Yes. That was my view of it and I want to state that I was looking as my habit of mind is, to know what the worst is. It would be impossible without going to the work of making an actual inventory of the merchandise, to classify the accounts and the labor involved would be
359 three or four days at least not by me alone but by a number of others to arrive within even a few thousands of the actual condition.

Q. Now, Mr. Williams, you have taken the merchandise there, you have made a memorandum there of $286,000 as to value of the merchandise instead of $378,000?

A. As I thought.

Q. That is your computation?

A. Yes.

Q. Can you tell us upon what facts that was based which had been called to your attention?

A. I made that based on the loans on the mer-
360 chandise and the margin, their indebtedness to the Bank of North America, if they loaned them $20,000 I assumed they loaned it on $25,000 worth of merchandise.

Referee: Were there loans against all of the merchandise?

A. Substantially, yes.

Q. All the merchandise had been hypothecated, had it, to the banks and the bleacheries?

A. Yes, and the bleacheries had a lien.

Q. In addition to the banks?

A. Yes.

Q. Did you report to Mr. Dockendorff at any or all of the interviews that you had with him concerning your computation, your figures on this July, 1910, trial balance? 361

A. Yes.

Q. And you called to his attention these items?

A. In substance just as I have testified here.

Q. What did he say?

A. Didn't agree with me.

Q. Did he give any reasons?

A. He thought I had taken a too extreme cut in the matter.

Mr. Wolf: I ask to have this trial balance sheet marked in evidence. 362

By the Referee:

Q. Did you show that to Mr. Dorkendorff?

A. Yes, sir, I did.

Q. At or about the time that you saw it?

A. Early in August. I cannot fix the date.

By Mr. Wolf:

Q. Early in August 1910 when you saw this trial balance of July 30 you had already gone over it and made the criticism or suggestion or computation you have just testified about before you saw Mr. Dorkendorff so that when you saw him you were ready to discuss the matter with him? 363

A. I presume I did that. It is natural that before I had anything to say I must have looked it over.

Received in evidence and marked Exhibit R1, December 23rd, 1910.

Now Mr. Williams, assuming that $250,000 was eliminated from the assets as shown by the trial

364 balance sheet what was the condition of the Schwab-Kepner Company at that time?

A. The Schwab-Kepner trial balance shows a capital of $75,000 and a surplus of $86,860.59.

Q. In other words counting the capital and the surplus there would be $160,000 over and above the debts?

A. I didn't say that.

Q. I understood you to say $75,000 capital and $86,000 surplus?

A. Yes.

Q. That makes $160,000?

A. Yes, sir.

365 Q. In other words there is $161,000 left according to that statement after the payment of the debts?

A. I didn't say that.

Q. How much would there be over and above the debts as shown by the trial balance sheet of July 30th, 1910, Respondent's Exhibit 1?

A. What is that?

Q. How much would be left after the payment of the debts of the Schwab-Kepner Company as shown by Exhibit R 1?

A. I don't know.

Q. Would anything be left beyond the $75,000
366 capital and the $86,000 surplus after the debts were paid?

A. If they had no capital and no surplus—

Q. Assume that the figures on the statement, the trial balance statement are correct; after the payment of the debts of the Schwab-Kepner Company would there be anything left beyond the $75,000 and $86,000 surplus?

A. There wouldn't be anything left. No capital and no surplus.

A. According to the figures as shown by the trial balance?

Q. That is what I asked you. 367

A. Even so.

Q. What would be left after the payment of the debts as shown by the trial balance sheet?

A. I can't answer that off hand.

Q. Do you figure the capital as a debt?

A. To the stockholders.

Q. After the payment of the debts to the creditors can you look at that statement and tell what would be left?

A. Not offhand.

Q. Can you give it approximately?

A. There are a lot of items here of expense. Oh, I would say deducting these, I will speak 368 in general figures, assuming that my computation as to the merchandise—

Q. I want you to assume that the figures shown on the trial balance sheet are correct.

A. If the trial balance sheet is correct then all the indebtedness would be paid and the capital and surplus would remain, less the expenses.

Q. How much would they be?

A. Something less than $100,000. Now, wait a moment—something under $100,000.

Q. So that if the $250,000 deduction is made according to your testimony—

A. Let me see, wait a moment. The expense 369 items figure roughly $80,000.

Q. What would be left—I would like to have an answer to that—what would be left after the payment of the debts of the firm as a surplus and for distribution to the stockholders?

A. Less than $100,000.

Q. With your deduction made from the assets as you have testified of $250,000 approximately, if that is correct, then according to the trial balance of July 30th, 1910 the company was insolvent to the extent of $150,000.

A. Speaking in round figures and with the idea

370 that $25,000 is a matter of no consequence, yes.

Q. Where are the trial balance sheets for August, September and October?

A. I assume they are in the trial balance book of the Schwab-Kepner Company.

Q. Did you discuss those trial balance sheets with Mr. Dockendorff?

A. I don't think that we ever had—I have no recollection that we ever had a trial balance sheet presented at the time of discussion other than this. That is the best of my recollection but I don't want to go on record as saying no. I don't think there was anything there.

371 Q. Now, after August 10th, 1910 how long did you continue in the employ of the Schwab-Kepner Company?

A. Up to the time of the receivership.

Q. Did you have any further talk between August 10th, 1910 and up to the time of the receivership with Mr. Dockendorff concerning the solvency or insolvency of the Schwab-Kepner Company?

A. There may have come up that question, probably did.

Q. From time to time?

A. From time to time. I had nothing to say
372 other than what I stated before.

Q. You still insisted upon your position and Mr. Dockendorff insisted upon his?

A. That is the fact.

Q. After your employment on July 5th, 1910 and up to the time of the receivership can you tell whether the financial condition of the Schwab-Kepner Company improved or became worse?

A. Became worse.

Q. Did you ever report that fact to Mr. Dockendorff?

A. We never had any general conversation

about it. I don't know in what terms we had 373
the conversation. I didn't think it was material whether any money was made and I don't think any figures were actually discussed, if so it has escaped my recollection, but I still believed that the calculation I had arrived at in a rough way was in substance correct.

Q. In other words to your mind the important interview was the one based on this July 30th?

A. That is the one most vividly portrayed in my memory.

Q. And having gone into the matter thoroughly at that time it came up thereafter fragmentally?

A. Yes. 374

Q. But you knew that the financial condition of the company was gradually becoming worse?

A. I believed it was. I don't say that I knew. I didn't set to work and make any exact computation.

Q. On what was that belief based?

A. On the fact that expenses were heavy, that charges of interest to the banks and their advances here were heavy and on the fact that their obligations were maturing constantly from day to day, which led me to believe that they were compelled to make sales which might or might not establish a profit. 375

Q. How much were the expenses of the Schwab-Kepner Company?

A. If you will let me have the report. The general business expenses as shown by my report to which I have referred before were $120,000, in round figures.

Q. Per year.

A. For the period from January 1st., I will have to qualify that, a little later, up to the time of the receivership. I can't say that those expenses were all incurred during that period of time, they appeared on the books.

376 Q. As having been incurred?

A. As having been incurred and disbursed, but whether they included item which properly belonged to a previous period I don't know, 11 months.

Q. In other words deducting $10,000 for an error of that kind, the expenses were about $10,000 a month?

A. Around that, yes.

Q. That is a conservative figure?

A. Well, I won't say that. I assume given in round figures that is about correct.

Q. You say that the interest charges were very
377 heavy?

A. That is included in that item.

Q. To whom were the interest charges paid principally?

A. Well, let me see. In the report to which I have heretofore referred there are three items of interest, commission and interest to J. E. Dockendorff $32,000 including $1,500 which is entered by the bookkeeper as having accrued. It is not charged up and not sent to the Schwab-Kepner office. There is interest on bank loans, $13,600. I am omitting the odd dollars and cents. They had interest on purchase accounts, $13,147, so that
378 in round figures the commission and interest on these three items I have referred to amounts to $58,900.

Q. Now, you spoke about the obligations of the company that were accruing.

A. Yes.

Q. What were they?

A. Notes and accounts.

Q. When did they begin to mature?

A. As in any active business, constantly.

Q. What happened to those obligations as they matured?

A. The accounts, some of them were paid and

some of them were settled by note and the notes up 379
to within a very short time of the insolvency were paid. I don't know but those notes were paid right up to within two or three days of the insolvency. I think they were.

Q. Do you recall that when the obligations for merchandise began to mature—

A. Pardon me for interrupting. It wasn't a question of beginning to mature, they were maturing right along.

Q. After July 1st, 1910, do you recall when merchandise obligations matured that Schwab-Kepner Company began to issue notes?

A. They had given notes for them for I guess 380
pretty generally the greater part of their business experience.

Q. Isn't it a fact that in the business in which the Schwab-Kepner Company is engaged that it is the usual thing that merchandise should be sold on the ten days' time?

A. I am not sufficiently versed with that business to say yes or no. In other words my actual knowledge of the details of the business are confined to my experience with the Schwab-Kepner Company.

Q. What goods did the Schwab-Kepner Company buy?

381

A. Cotton goods of various kinds.

Q. Which it sent to the bleacheries?

A. Sometimes it was sold and sometimes sent to the bleacheries to be finished.

Q. They only bought goods in the gray?

A. I presume so.

Q. Do you recall that many of the maturing obligations of the Schwab-Kepner Company after your employment on the 5th of July, 1910, as they matured were sent to the attorneys of the Schwab-

382 Kepner Company in order that a defense should be interposed to the suits?

A. I don't know of any case during my time. If there were any I had no knowledge.

Q. Do you recall at least one instance where an account of $17,000 for merchandise became due and the Schwab-Kepner Company claimed to have a counterclaim because of some defect or other in the goods and sent the matter to their attorneys and finally adjusted the account by paying it off piece meal?

A. Not in my day.

Q. It was never called to your attention?

383 A. Did it occur during this period?

Q. Either August or September, 1910?

A. It is news to me.

Q. You don't know about that?

A. No, sir.

Q. Was there any change in the meeting of the Schwab-Kepner Company of its maturing obligations as regards the rapidity or period of time within which they were met after July 5th, 1910, as compared with before July 5th?

A. I couldn't answer. I didn't make specific examination.

Q. After July 5th, 1910, and down to the time of
384 the receivership did they continue to become slower and slower in meeting their obligations, get more time and more time or did they meet them just as rapidly?

A. I think they sometimes settled their open accounts with notes. I would say from what I learned that I believe that was an understanding with some of the parties from whom they purchased goods. It would seem to so indicate up to the day after Thanksgiving, at which date the notes up to and including that date were all paid, as I remember it now.

Q. Can you say anything with regard to the length of time that the notes were running at the end of this period of your employment as compared with the inception of your employment? 385

A. I don't think there was any material difference.

Q. You spoke of sales made by the Schwab-Kepner Company at a loss, can you amplify that?

A. I didn't mention a loss.

Q. You said made without producing a profit?

A. Yes.

Q. What can you testify concerning such sales?

A. Only in a general sense. I know that people who have in a slow market to sell goods can't establish a profit. 386

Q. When did the market become slow?

A. More or less sluggish all the time.

Q. During the entire time of your employment that was so?

A. During the entire time the market was what we might call slow.

Q. Could you tell by an examination of the books whether or not the Schwab-Kepner Company was making sales with or without a profit?

A. The only way I could do that would be to take the invoices and look up the bill numbers and try and establish the corresponding sales and in that way I would have to know, which I don't, what it cost to finish these goods. 387

Q. Did you ever make any such test?

A. No.

Q. You are prepared to testify then from what you saw in the business and from your knowledge of the books that during certain periods of your employment sales were made at a price that would not produce a profit?

A. I haven't said so.

388 Q. What have you said on that subject?

A. I have said that their sales as a whole in my judgment were sold under such conditions as would make it impossible to produce a profit, a sluggish market, obligations to meet in order to pay their creditors, notes to meet which they did meet; I have not said that there was any specific item nor am I prepared to-day to go and put my finger on a sale and say it was sold at a loss.

Q. That was your understanding?

A. My business experience tells me that they didn't establish a profit under such conditions.

Q. And the expenses and interest charges being
389 heavy—

A. I speak of a profit over and above expenses. I don't call it a profit if a man gives $101, and it costs him $102, to buy the goods and sell them.

Q. Mr. Kepner drew a large sum of money from the Schwab-Kepner Company?

A. Before my day.

Q. Do you know what he drew after your day?

A. I can tell you. I am informed by the proper authorities that Mr. Kepner's account is credited with salary at the rate of $10,000 a year. His debit balance in round figures on the 30th day of June was $21,000, and at the time of the receivership
390 $24,000 after crediting salary.

Q. Were you informed that any of the customers of the Schwab-Kepner Company were practically subsidiary companies or organizations to the Schwab-Kepner Company?

A. I only had knowledge of one and was so unimportant that it was of no interest.

Q. What one is that?

A. The Ostermoor Mills Company, and I don't know even that that is. Mr. Ostermoor is a personal friend of Mr. Kepner and in what way the business was established I have no knowledge.

Q. How about the American Shirt Company? 391

A. That was formed before my time.

Q. After you began to pass on the credits, did you have occasion to pass on the credits to the American Shirt Company or the Ostermoor Mills Company?

A. The Ostermoor Mills, I don't think I checked them for anything, if I did it may have been a piece of goods as a sample.

Q. How about the American Shirt Company?

A. There were some goods charged to them but I can't recall whether that was previous to August 10th or afterwards. There is an agreement between these two companies. I don't know whether 392
the American Shirt Company is a subsidiary company. I should say not, I should term it an unwise agreement.

Q. What is the nature of this agreement?

A. Talking from memory only, the agreement amounted to this Schwab-Kepner Company bound itself to extend to the American Shirt Company a credit of $10,000 and the American Shirt Company agreed to accept it.

Q. Did you have occasion to discuss with Mr. Dockendorff the checking of credits, or with Mr. Kepner of the American Shirt Company?

A. I didn't catch that. 393

Q. Did you have occasion at any time to discuss, either with Mr. Kepner or Mr. Dockendorff, the checking of credits to the American Shirt Company?

A. Why, that was before the business had been going on before my day and beyond telling Mr. Kepner that I thought it an exceedingly foolish agreement, I don't know that we ever had anything but a fragmentary discussion.

Q. Now, after you took charge on July 5th, or after August 10th, 1910, were any of the methods

394 you criticised changed? The method of keeping the books, the condition of the accounts, or anything of that sort? If so, what did you say and what was done?

A. We made a change in the fact that we were much more rigid as to the parties to whom we sold goods on credit.

Q. Was any change made in the method of keeping the books?

A. Merely to give more details for information. For instance, they had had a blanket expense account and a blanket merchandise account. They were split up in order to exhibit their component
395 parts.

Q. Do you know whether or not, from the inception of the Dockendorff account, all remittances with the exception of the two checks you have excepted, all remittance from customers of the Schwab-Kepner Company were turned over in kind to Mr. Dockendorff?

A. I have no knowledge of it since its inception, only since July.

Q. Do the books of the Schwab-Kepner Company show anything on that subject?

A. I have had no occasion to examine them.

Q. Assuming that all checks were turned over
396 to Mr. Dockendorff, then the bank account of the Schwab-Kepner Company would only show deposits of Mr. Dockendorff's checks?

A. And of loans.

Q. And of loans made by the banks to the Schwab-Kepner Company?

A. In substance, that is correct. They would show transfers of checks from one bank account to the other of the Schwab-Kepner Company.

Q. That would simply be a transfer of funds advanced to the company by Mr. Dockendorff?

A. Yes.

Q. Now, Mr. Williams, you made an examination of the books of the Schwab-Kepner Company as of the date of the receivership, did you not? On behalf of the Receivers? 397

A. The word examination is too broad to be used there. Examination means a scanning of details.

Q. Have you done anything for the Receivers?

A. I made a report, as the books show and as the data in connection therewith shows.

Q. Can you tell us what the assets and liabilities of the Schwab-Kepner Company were, as of the date of the receivership from the examination you have made?

398

A. I was instructed to make a report on what the books showed, classify the accounts and confine my report to that. Under the head of Assets, there is Cash $187.02, Merchandise at the bleacheries and in the warehouse pledged, $212,431.71, and at the Schwab-Kepner warehouse not pledged, $1,050.43.

Q. I just want the gross figures.

A. Accounts receivable pledged, $431,237.71; accounts receivable not assigned, $13,629.05, making a total of accounts receivable of $444,866.76. I want to say that those accounts represent charges made on the books of the Schwab-Kepner Company 399 and include a large sum of unfilled shipping orders, these orders having been held by the bleacheries by reason of the fact that the merchandise at the bleacheries as compared with the amount of loans, did not justify the shipping of the merchandise. These shipping orders, unfilled, amount to $120,920.11. This amount of unfilled shipping orders was supplied to me by the Treasurer of the company, schedules prepared by him. The value of the merchandise was also given to me by the Treas-

400 ager of the company, an inventory made under his direction. The net amount of accounts receivable on this basis is $323,946.32. J. B. Kepner open account, $24,140.93; bills receivable pledged, $7,516.96; bills receivable not assigned, $1,350; bills receivable J. B. Kepner, $40,721.42, making a total of bills receivable of $49,588.38. Estimated book value, $1,429.51. This amount is shown by a supporting schedule, but it begins with an item of approximately $2,600, stated on the books of the Schwab-Kepner Company and I was unable to find any details as to what items made up the sum mentioned. There is a deficiency as of profit and
401 loss statement being part of this report, of $198,348.35.

Q. Just read the gross liabilities?

A. Under the head of liabilities including the item of capital stock as a liability to shareholders, there is $817,122.65.

Q. Now, that shows a deficiency of one hundred ninety-eight thousand and some odd dollars?

A. Yes.

Q. And that takes into calculation the open account of J. B. Kepner, of $24,000 and the bills receivable of J. B. Kepner, of $40,000?

A. Assuming that is their face value.

402 Q. In other words, not only the two Kepner items but every other item on the books, assuming that it is worth its face value there is still a deficiency of $198,348.35?

A. That is correct. This is based on the information given me as to the value of the inventoried merchandise and the amount of unfilled shipping orders.

Q. By the Treasurer of the Schwab-Kepner Company?

A. By the Treasurer of the Schwab-Kepner Company.

Q. Do you know of any occurrence between July 403
5th, 1910, and the receivership in November, 1910, outside of the ordinary running mercantile loss of this business, that produced any loss to the Schwab-Kepner Company?

A. I do not.

Q. In other words, eliminating that mercantile loss in the meantime on the sale of goods and payments for expenses, etc., their condition in July, 1910, was the same as it was in November, 1910?

A. I don't know of any change except the expenses of the company.

Q. They were paid out in the meantime?

A. Yes.

Q. And the probable loss on the sale of the 404
goods?

A. Yes. I want to say, Mr. Wolf, that their condition in July, of course, was not actually ascertained.

Q. You might tell us on what information you made up the certain items on that report there under the fixtures item?

A. I made an analysis of the furniture and fixture account and of the expense account and all purchases that were made between January and July were added to the twenty-six hundred odd dollars stated in their books as the valuation of 405
the furniture and fixtures at December 31st, 1909, $2,679.

Q. You didn't deduct anything at all?

A. I made no deductions at all.

Q. How about the merchandise account?

A. The valuation was given me by the Treasurer of the company.

Q. And you took his appraisal of it?

A. I took his figures.

406 By Mr. Atwater:

Q. That inventory was made when?

A. Immediately after the Receiver took possession.

Q. Under the direction of the Receivers?

A. So I understood.

Sworn to before me this 23rd day of December, 1910.

Adjourned to Friday, December 30th, 1910, at 10:00 A. M.

407

408

UNITED STATES DISTRICT COURT, 409

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Alleged Bankrupt.	In Bankruptcy.

Continuation of proceedings on hearing on petition of John E. Dockendorff, before Edwin G. Adams, Referee in Bankruptcy as Special Master, 410
at No. 20 Broad Street, New York City, on Friday, December 30th, 1910 at 10:00 A. M.

PRESENT:

G. B. TOWNSEND and JULIUS HENRY COHEN, Attorneys for Petitioner.
Mr. WOLF, of Hays, HERSHFIELD & WOLF, Attorney for Creditors and Receivers.
G. B. WOODRUFF, Attorney for Receivers.

JOHN E. DOCKENDORFF, recalled:

Examination by Mr. Wolf: 411

Q. Mr. Dockendorff, will you please produce the letter of May 17th, 1910, to the Schwab-Kepner Company and the letter of June 1st, 1910 to the Schwab-Kepner Company?

A. Yes, sir.

Counsel for petitioner produces letters referred to.

Q. Mr. Dockendorff, your counsel has produced a letter of July 5th, 1910, to Cyrus Williams

412 which has been read into the record, was that letter written by you?

A. I think so, I haven't seen it.

Mr. Cohen: What are you going to do with the two letters you asked for, Mr. Wolf?

Mr. Wolf: I am going to use them.

Q. Was it written by you?

A. Yes.

Q. And then delivered by you to Mr. Williams personally?

A. It was.

413 Q. And it was signed by you personally?

A. It was.

Q. In the letter of July 5th, 1910, you say that you have instructed Mr. W. D. Hardy to turn over to Mr. Williams copy of a letter addressed to the Schwab-Kepner Company under date of May 17th, 1910, as well as letter given to him, that is, Hardy, under date of June 1st, 1910, are these two letters which you have produced of May 17th, 1910 and June 1st, 1910 the two letters referred to in the letter to Mr. Williams?

A. Yes, they are.

Q. The letter of May 17th, 1910, was signed by

414 you, yourself?

A. It was.

Q. And also by the Schwab-Kepner Company, J. B. Kepner, President, W. A. Corbett, Treasurer?

A. Yes.

Offered in evidence.

Letter of May 17th, 1910, received in evidence and marked Exhibit R2, December 30th, 1910.

Exhibit reads as follows:

POOR COPY

"J. E. DOCKENDOFF 415
20 Broad Street

New York, May 17, 1910.

The Schwab-Kepner Company,
79 Leonard St., New York City.

Dear Sirs:

Referring to the new agreement dated May 16, 1910, to be executed by you for the purpose of my continuing to make advances to you on accounts receivable; the following conditions have been agreed upon in connection with this agreement and comprise some of the conditions for the working out of the proposition as expressed in that agreement: 416

1. In addition to having Mr. W. A. Corlett, your Treasurer, act as my agent to turn over remittances to me, it is agreed that I will secure the services of a competent auditor and accountant to act as my representative in your office and who will be in entire charge of all accounting and bookkeeping. Whatever salary I pay to this employee will be reimbursed by you to me monthly. He will become and remain a director of your corporation as long as any agreement between us is in force for the purpose of your securing advances on accounts receivable. 417

2. There are to be no exceptions, whatsoever, as to the assignment to me of all accounts receivable issued by your company as and when made. When scheduling accounts against L. N. Levinsohn, the American Shirt Company, or against any other firm in which you or your officers may be directly or indirectly interested, they are to be listed on separate schedules entirely by themselves.

3. All releases to mills for accounts sold subject

418 to the purchaser's order direct for shipping instructions are to be sent to my office ready for mailing and will accompany the assignment of the account in lieu of a bill of lading.

Where goods are sold by you at the mill and held there subject to your order, assignment of duplicate invoices should be made to me, but should not be stamped "Held at mill, covered by insurance to same extent as our goods." Such cases, I understand, are only occasional and should be listed on separate schedules, which will be held by me awaiting receipt of bill of lading after goods have been shipped according to instructions which will be
419 received by you from purchasers at a later date.

4. All statements rendered by you to your clients are to be made in triplicate. Till further notice I desire these statements, ready for mailing, to be sent to my office for this purpose, together with the triplicate copy, which will be retained by me here.

5. All bills of lading representing shipments from mills to your customers care of The Schwab-Kepner Company will not be cleared till the additional express receipt is forwarded by you showing that the goods have been shipped from your office to the
420 purchaser of the same.

6. All remittances, as well as all notes, received by you—without any exceptions whatsoever—are to be forwarded to me daily, and a system provided in order that the total receipts for any one day in your cash book correspond in amount with total as reported in the daily remittance sheet sent by you to my office.

7. Duplicates of all credit slips as issued daily are to be sent to me, and the amounts of these credit slips listed on the daily remittance sheet after the adjustment, thus forming additional items to

be added to this daily adjustment amount. These credit amounts, together with the adjustment checks, to be covered by you bi-weekly in accordance with the present routine. Your bookkeeping system shall also provide for a daily entry of the total of these credit slips issued during that day, which will thus correspond with the total of the credits listed on my daily remittance sheet. 421

8. I desire it to be understood that neither the Schwab-Kepner Company, nor Mr. Kepner, nor any other officer of the Company shall enter into any agreement with any person, firm or corporation for the purpose of financing same, or for the purpose of supplying them with working capital, without first consulting me and securing my approval. I also desire it to be understood that personal drawings of Mr. Kepner shall be restricted to not more than $10,000 a year until my approval for any increase be secured. 422

Under the above conditions it will be necessary that you anticipate your requirements in detail for a week ahead, and, in a general way, for thirty days ahead. A report of these requirements is to be rendered by you with complete details the beginning of each week.

I enclose herewith an exact duplicate of this letter. If all the above conditions are in accordance with the understanding arrived at between us, you will please sign and return this duplicate. This duplicate will be accepted by me as an acknowledgment that you have received my letter and that you agree to all of the above. 423

Very truly yours,

J. E. Dockendorff,

JED NBC

The Schwab-Kepner Co.

J. B. Kepner,

Pres.

W. A. Corbett, Treasurer."

424 Mr. Wolf: I also offer in evidence copy of letter of June 1st, 1910 to W. D. Hardy.

Received in evidence and marked Exhibit R3, December 30th, 1910.

Exhibits reads as follows:

"June 1, 1910.

W. D. Hardy, Esq.,
New York City.

Dear Sir:

I hereby engage your services as Auditor and Accountant, to be in charge of all bookkeeping and accounting in the offices of The Schwab-Kepner
425 Company, of 70 Leonard Street, City. Your salary is to be at the rate of Two Thousand five hundred dollars ($2,500.) per annum.

While you are to act as my representative in all that relates to a certain agreement between that corporation and myself dated May 16, 1910, for the purpose of their securing advances on their accounts receivable, you will also make yourself as valuable as possible to the business. The matter of collections requires systematic following up. A very large amount of balances carried forward since January 1, amounting to about $95,000, is
426 still outstanding. An analysis of these balances should be made at once, and efforts to ascertain the exact facts relative thereto should be made at once.

I enclose herewith a brief memorandum of the various points which I am particularly interested to have you cover. I am enclosing copy of this memorandum to the Schwab-Kepner Company.

Yours truly,

JED/NBC
Encl."

Q. Was this letter of June 1st, 1910, to Mr. Hardy signed by you?

A. It was.

Q. How long had Mr. Hardy been employed by the Schwab-Kepner Company prior to June 1st, 1910? 427

A. Not at all. I think he was only there about a month.

Q. A month prior to June 1st?

A. Not prior at all to June 1st. I think that was about the time Mr. Hardy was employed.

Q. You say in this letter that Mr. Hardy is employed as Auditor and Accountant to be in charge of all bookkeeping and accounting in the offices of The Schwab-Kepner Company, do you understand that Mr. Hardy performed those duties in accordance with this letter of June 1st, 1910? 428

A. I presume so. I don't know that he did.

Q. Did you also employ a Mr. Jones in connection with the Schwab-Kepner Company?

A. Mr. Jones was recommended by me for a bookkeeper.

Q. And to whom did you recommend Mr. Jones' services, the Schwab-Kepner Company or Mr. Williams?

A. To both.

Q. By whom was he personally employed, by you or by Mr. Williams?

A. I think I engaged him, I secured the engagement for him. 429

Q. Did you write Mr. Jones any letter on the subject of his employment?

A. No.

Q. What talk did you have with Mr. Jones, if any, regarding his duties?

Mr. Cohen: If your Honor pleases, so much of this record as I have been able to read has indicated that counsel for the receivers is endeavoring to conduct under the guise of cross examination an investigation

430 under 21A. The proceeding that is pending before you as Master is a proceeding brought upon the petition of John E. Dockendorff & Company to secure the turning over of certain checks and accounts which the Receivers have collected and which *prima facie* belong to Mr. Dockendorff. There is no allegation of any kind or charge of fraud made by way of defense, the only answer filed is one denying the allegations of the petition and those allegations have been proved *prima facie*. There is absolutely nothing so far as I can learn that Dockendorff & Com-
431 pany need hide or need fail to disclose but in the meantime the money which has been collected by the Receivers which is properly and legally their money is being held up pending a general fishing expedition made by counsel for the Creditors and Receivers. I have been unable to find any authority for the proposition that upon cross examination of a claimant for accounts receivable received in the way in which brokers receive accounts every day in the City of New York from dry goods houses can be made the basis for a general investigation under 21A. If
432 counsel for the Receiver desires to conduct an inquiry of that kind his proper proceeding is an application for an order for the examination of Dockendorff & Company or witnesses to conduct such an inquiry, but this is a separate and distinct proceeding before you and on the issues as framed this proceeding, this examination, would seem to me to go beyond itself. It means that on redirect examination of Mr. Dockendorff we will have to take reams of testimony, put in reams of evidence and exhibits to show that

all of the insinuations or suggestions or in- 433
ferences that are sought to be drawn out of half truths are without any foundation. From this point on I want to object to all such questions as have no direct bearing or relationship to the issues framed before you and I am going to protest against the conducting of an investigation under 21A in a proceeding referred to you as Special Master upon a petition, and I object to this question on that ground. If Mr. Wolf makes other contentions than those set forth in the answer to the petition then they should be set forh in an amended answer. 434

Master: I think the point is well taken, Mr. Wolf, that they are entitled to an answer setting forth your contentions which will indicate the issues. Could you make a verbal statement of what your amended answer will contain?

Mr. Wolf: I can try to. I do not want to be bound by this verbal statement. The contention of the Receivers is, or rather the contentions of the Receivers are that at all times subsequent to May 1st, 1910 the Schwab-Kepner Company was a New Jersey Corporation doing business in 435
New York; that New York was its principal office and place of business; that at all times subsequent to that date it was hopelessly and totally insolvent and unable to pay its debts; that Mr. Dockendorf had full knowledge of the financial condition of the Schwab-Kepner Company and that the money realized from the pledges of its assets to Mr. Dockendorf was used in making preferential payments; that Mr. Dockendorf himself received preferential

436 payments and that the advances from Mr. Dockendorf were not made to the Schwab-Kepner Company for a present consideration but were in shape of unsecured loans which have since been repaid by the pledging of the securities and that the pledging of the securities was a pledge of the same for a past consideration.

Mr. Cohen: So far as the amended answer sets forth alleged facts of hopeless insolvency and knowledge of insolvency and preferential payments or that they were not for present consideration and except
437 as the answer sets forth legal conditions, the facts are denied by Dockendorf & Company and we ask leave to file a pleading putting them in issue. In view of the contention that Mr. Wolf makes which has been completely disposed of as he knows in the National Discount Company case by the Circuit Court of Appeals, I think that the question can be disposed of as a matter of law in the nature of a demurrer to the pleadings without taking up the time and going to the expense of a long examination into the facts. It is
438 not the law, sir, that a house, doing its banking with a banking concern and borrowing money on its accounts receivable, paying interest in the regular course of business is guilty of making any preferential advances by using the money to pay its debts, even if it is done to prefer. In the case of Van Iderstine it was shown clearly that Fellerman, bankrupt, deliberately set out to defraud his creditors and used the National Discount Company to take the accounts receivable and convert

them into cash. The Circuit Court it 439
appears held very clearly that making a preferential payment does not constitute a fraud and that is the very point of my insisting that these proceedings be reduced to writing because if any such claim is made by them the burden of proof is upon them. They are cross examining a witness which we produce and if there are issues here involving large sums of money they should be conducted like any other legal question. You are confined on cross examination to those matters brought out on direct. 440

Mr. Wolf: Mr. Dockendorf is bringing us into Court on the ground that he is a secured creditor, trying to collect moneys and I have a right to show any state of facts that would not entitle him to those moneys. We have proceeded at some length along these lines and it seems to me that it comes with ill grace from the petitioner who has acquiesced until the thing in half over and then object.

Referee: It seems to me that the question of law if it can be raised on the proceedings should be disposed of first and 441
in that case there is no necessity for taking further testimony to-day.

Adjourned to Friday, January 6th, 1911, at 2.00 P. M. at the rooms of the New York County Lawyers Association, No. 165 Broadway, New York City.

442 BANKRUPTCY COURT,

ESSEX COUNTY.

In the Matter
of
THE SCHWAB-KEPNER COMPANY,
Bankrupt.

Further proceedings on petition filed by John Dockendorff against the Receivers of the bankrupt
443 corporation, before Edwin G. Adams, Esquire, Referee in Bankruptcy, as Special Master, at the rooms of the New York County's Association, No. 165 Broadway, in the City of New York, on Friday, the thirteenth day of January, nineteen hundred and eleven, at two o'clock in the afternoon.

For the Petitioner appeared JULIUS HENRY COHEN and GERARD G. TOWNSEND.
For the Receivers appeared RALPH WOLF and JAMES M. ROSENBERG.

The Referee: The amended answer filed by the receivers in this case alleges that at
444 the beginning of the four months' period prior to the filing of the petition in bankruptcy, the bankrupt corporation was insolvent, in that it was unable to meet its maturing obligations, and in that its liabilities were considerably in excess of its assets; that this situation was shown to the petitioner; that at this time there was due to the petitioner by the bankrupt a sum considerably in excess of the assigned accounts which he held as security; that thereafter and during the intervening period down to

the date of the bankruptcy, the petitioner 445
made further advances of moneys to the bankrupt, enabling it to pay certain of its creditors and to obtain further credit, and enabling it also to create new and additional accounts, which accounts were assigned by the bankrupt to the petitioner as security for moneys advanced.

The answer further alleges that the accounts so assigned during this four months' period to the petitioner were, in part, assigned as security for loans theretofore made, and that, as to loans made during the four months' period, in many instances 446
the accounts were assigned after the loans had been made.

This seems to me to raise the issue as to whether the assignment of these accounts, as well as the assignments of warehouse receipts, constituted preferences given by the bankrupt, and also raises the issue whether it was in violation of Section 64 of the New Jersey Corporation law. For these reasons I shall overrule the demurrer.

Mr. Cohen: The discussion last week recognized that the burden of proof, and the answer recognizes that this claim is in 447
the nature of an affirmative defense or counterclaim, and that the burden of proof is on the respondents ordinarily. Therefore in the trial of the case, the petitioner's case would be a mere formal submission of proof of assignments of moneys that are due thereon, and that formal case that would entitle him to the money in the hands of the Receiver. Without restriction respondents' counsel was permitted to cross examine the petitioner with a view to sus-

448 taining the respondents' case. The order of proof is always within the discretion of the Master, and it sometimes is permissible to examine a witness on cross examination and make him one's own witness without waiting for one's own case. The record in its present shape is rather confusing, and it would seem as though it were proper at this time to ask the Master to make some ruling as to the order in which the evidence should be taken. The examination of Mr. Williams and Mr. Dockendorff by Mr. Wolf has been largely an examination in support
449 of the allegations now set forth in the amended answer, and we will certainly be permitted a very full cross examination upon those points. Now if the Master takes the testimony with a full understanding on the part of all parties as to where the burden of proof lies, it may be that the order of proof is of subordinate consequence, but it does seem to me that some decision should be made at this time as to the order in which the evidence shall be received; otherwise we may be wasting the time of the court and may be wasting the time of
450 respondents as well as that of the petitioner.

The issue raised by the amended answer, your Honor has ruled, is the issue in this case and ought readily to be disposed of very quickly, and we are ready to let the respondents go on with their case, resting our case upon the *prima facie* proof which we offered and relying upon the cross examination of their witnesses to bring out such additional facts as may clear up the situation. At the present juncture we are in

the middle of the cross examination of the petitioner and have one witness to cross examine, which, is, in effect, with direct examination in support of respondents' case, and ought not to be permitted except with a very clear understanding of the legal situation. That is one of the reasons I made objection to such proceeding before, on the hearing before, until the issues were determined, in order that your Honor may clearly define the relation of the parties and the burden of proof as it stood before you. 451

(After argument.)

The Master: I do not myself attach very much importance to the question of the order of proof, as to whether the evidence is elicited on cross examination or direct examination, so long as the question of the burden of proof is borne in mind. Of course I think Mr. Cohen's suggestion is right, that the burden of proof of the allegations of the answers is on the Receivers. 452

(After argument.)

The Court: Certainly as long as we have entered upon the cross examination of Mr. Dockendorf and Mr. Williams, I think we ought to keep on with that proceeding. As to any other witness that may be called in behalf of the petitioner, I will determine on the examination whether a cross examination is proper, or whether Mr. Wolf— 453

Mr. Cohen (interrupting): There can be no objection if your Honor holds to the rule that the burden of the proof is on the respondents, because the master will review the testimony and report the testimony as

454 it bears on each point, and as it has been adduced by the respondent; and if your honor rules that, since these witnesses are upon the stand, all of the evidence which they can give, either in support of the respondents' affirmative claim or in support of the petitioner's claim, should be received, of course we can make no further objection; but we ask your honor throughout to bear in mind that while of course the respondents have the right to examine Mr. Dockendorf as an adverse witness, nevertheless, they are calling him as a witness to prove
455 their case.

The Master: I am not sure that they are entitled to cross examine on these points, but I do not think that is of any importance, because this is an equity proceeding. The only question is as to the right to ask leading questions, but I do not think that point will be seriously raised, because up to this time Mr. Wolf has not asked any leading questions. The burden is on the Receivers to sustain their claim.

Mr. Wolf: We do not want to be considered as assenting to that ruling. As I
456 understand it, there is not any conclusive ruling, pinning me down. I call your attention to the fact that under Section 67 of our transfer act we are within the four months. As I read the section, I do not think that the burden is upon me. But I do not think that that is important either. I think you can decide that issue, as all other issues, when the testimony is all in. I suppose that testimony will be there for what it is worth, and inasmuch as it is there, and the only testimony, it is not a

question of the burden of proof, but of 457
proof. But that is a question you should
determine when you decide the whole issue.

Mr. Cohen: Counsel for the respondents, at the last hearing, recognized very clearly that the burden of proof was upon the respondents, and the fact that the allegations are now set up in the amended answer in the way of affirmative defense, is a clear recognition of their obligation as we could ask for.

The Court: I do not think that is important now. If I decide to rule that the burden is on the Receivers, I can rule that 458
way when the time comes.

The Receivers having collected certain moneys claimed by Dockendorf, referred to in the petition and answer herein, and holding it as a separate fund subject to the decision of the Court as to its disposition, and Mr. Cyrus Williams devoting his time to the collection of such outstanding accounts, it is stipulated that his salary, two hundred and fifty dollars per month, shall be paid out of the fund, and that Arthur Givey having been elected Trustee in Bankruptcy, and Hays, Hershfield & Wolf ap- 459
pearing for the Trustee, it is stipulated that the Trustee shall collect said moneys in the same manner and upon the same understanding, and that payments to said Williams shall be made in the same way, and an order may be entered herein, making the Trustee a party to this proceeding, so that it may be continued by him, as to the accounts collected by him; and that the proceeds of such collections shall be treated as a special fund to await the determination of this proceeding or the further order of the court.

460 CYRUS WILLIAMS recalled.

Redirect examination by Mr. Cohen:

Q. Mr. Williams, before you became associated with Mr. Dockendorf in this matter, had you had any experience as a credit man?

A. Oh, yes.

Q. How long have you been a credit man?

A. Well, in nineteen hundred—no—in eighteen hundred and ninety-five, I had had more or less to do with credits up to that time, but in 1895 I took up a position in which I devoted my whole time in making credits.

461 Q. You have been engaged with a banking house?

A. Yes, I have.

Q. With what house were you connected?

A. Ladenburg, Thalman & Company.

Q. And did you become familiar with the business of lending money on accounts receivable?

A. I had considerable experience in that.

Q. During the period that you were with Ladenburg, Thalman & Company, a very considerable sum of money passed under your supervision?

A. Yes.

462 Q. Approximately how much?

A. Substantially more than ten million dollars.

Q. Now will you briefly describe the general character and nature of that business?

Mr. Wolf: Of which business?

Mr. Cohen: Lending money on accounts receivable, as it is understood by bankers generally.

Mr. Wolf: That is objected to as incompetent, immaterial and irrelevant.

The Court: I think that is competent, Mr. Wolf. The objection is overruled.

Mr. Wolf: I pray an exception. 463

The Court: I do not think you need an exception. This is before a Master and is an equity proceeding, anyway.

A. When a mercantile house or some proprietor, it doesn't matter which, or other person or corporation, desires to borrow money on accounts receivable, the method is briefly, this: a contract is usually drawn, though I have known of business being executed without a contract, that is, a written contract—usually a contract is drawn, defining the terms; that contract usually prescribes the method of the pledge, and the accounts are pledged, not only as a whole, but there is almost 464
always an individual pledge in some form; it varies. By that pledge, the account receivable becomes assigned to the lender of the money, and with it the title to the merchandise on which the account is based.

Q. By that you mean the title to the merchandise is supposed to pass to the vendee?

A. The title to the merchandise passes to the banker.

The Master: I understand that you are now telling us the provisions of the usual contract?

Witness: Yes. 465

The Master: Not drawing your conclusion what it means, but what the nature of the contract usually is?

Witness: Yes.

Mr. Wolf: I think I have a right to examine him was to his qualifications, to see if any such custom exists.

Mr. Cohen: I object now while the witness is in the middle of an answer.

The Master: Very well; let him finish his answer.

466 Mr. Wolf: I ask leave at this point to ask the witness the preliminary questions whether what he says is a custom, and if it is a matter of agreement, whether there is any qualification in the agreement, and what he knows about it as an expert.

Mr. Cohen: I object to the interruption.

The Master: I will permit the witness to finish his answer.

(By direction of the Master, the stenographer read the answer of the witness.)

The Master: Go on with your answer.

Witness: The object of that is simply
467 in the event of the failure of the account receivable to maintain its standing as collateral, the merchandise on which the account is based becomes collateral.

Mr. Wolf: I move to strike out all of the answer following "the object of that being."

The Court: I think that that should be stricken from the record.

Q. Have you finished your answer in regard to the custom?

A. All I think it is necessary to state, yes. If
468 you have any questions to ask, I would be glad to answer them.

Mr. Wolf: Now I ask leave to examine the witness preliminary as to what he knows about it.

The Master: You may.

By Mr. Wolf:

Q. You have been testifying about a custom or an alleged custom in this business of lending money on outstanding accounts?

A. I understood I have been speaking as to

what was my knowledge and experience during the 469
time I was engaged in that business.

Q. Isn't it a fact that when a banking firm lends money on outstanding accounts that the relation between the borrower and the banker is established by a written agreement?

Mr. Cohen: I object.

The Master: The objection is sustained.

Q. Is it not the fact that written agreements are entered into between the banker and the borrower?

Mr. Cohen: Objected to as cross examination. 470

The Master: The objection is sustained.

Q. Do you mean to say that a custom exists irrespective of the contract that is entered into between the banker and the customer?

A. I assume that when a contract in writing exists, that covers the agreement, whether there be any custom or not.

Q. What can you say as to the number of instances where a contract is not made between the banker and the customer, as compared with the number of instances where it is made?

A. Those cases in which the contract is not 471
committed to writing, so far as my experience runs, are small in number.

Q. Can you say that it is the custom to reduce the agreement to writing?

A. When I was in the business it was. If you mean by custom, that the great majority of such cases were in writing, if that establishes the custom, that is so.

By Mr. Cohen:

Q. What you were testifying to was as to the general custom? A. Yes.

472 Q. And the form in which those contracts took shape.

A. I say that the general provisions as to all of those contracts are about the same; the details are different, are they not?

Mr. Wolf: That is objected to as incompetent, immaterial and irrelevant and tending to show contractual relations by showing a custom.

Mr. Cohen: The evidence is not offered for the purpose of showing a contractual relation between the parties, but is offered
473 for the purpose of showing surrounding circumstances and the usual and ordinary method of conducting a business of this sort.

The Master: That is the purpose for which I received the testimony, Mr. Cohen. I do not think that that question is competent. You may show what the custom is of loaning money on outstanding accounts.

Mr. Cohen: I want to know then what the general method of doing the business is, without reference to the details of any
474 specific contracts.

Mr. Wolf: I make the same objection.

The Master: The objection is overruled. Answer the question.

Witness: The general custom is to pledge an account, to pledge with it the merchandise on which that account is based, so that should, for any reason, the account fail as collateral, the merchandise is in substitution, automatically.

Q. Now you said something about there usually

being a contract covering a series of transactions. 475

A. I would say about that, that almost invariably these contracts cover the total of the business, the daily transactions. They don't always do so.

Q. So that usually the relation between the banker and the merchant is established in advance?

A. Yes.

By the Master:

Q. That is, in advance of the loans being made and the accounts assigned?

A. As a rule, almost always it is established in 476
advance of the loans and in advance of the accounts received.

By Mr. Cohen:

Q. And the advances are continued from time to time, on new collateral, as the old collateral is taken up and new collateral produced?

Mr. Wolf: That is objected to as irrelevant, incompetent and immaterial and not binding on the transaction which took place in this case.

The Master: The objection is overruled.

(Question read by the stenographer.) 477

A. That is not entirely so, Mr. Cohen.

Q. Describe the actual situation.

A. For instance, in beginning an account there may be transactions of a hundred thousand dollars a month. Let us assume now that none of that may mature before the second month's advances begin—

Mr. Cohen (interrupting): Yes, I understand that.

Witness: Yes. Now, the collateral, of

478 course, expires by the payment of the money or the return of the merchandise in the same shape.

Q. See if I can make my understanding clear to you, and if I am in error you will correct me. Assuming that Jones & Company, bankers, have arranged to do business with Smith & Company, merchants, have agreed to lend them money on their accounts receivable; that Smith & Company may bring down to-day a thousand dollars of accounts receivable, under the agreement, whatever percentage it may be, say eighty or ninety per cent., whatever it is, that amount, and you advance the
479 amount on accounts receivable, and then to-morrow Smith & Company send down a different set of accounts, a similar proportion would be advanced on those accounts?

A. Yes.

Q. And as soon as the first thousand dollars is collected by the banker, the entire amount will be collected by the banker?

A. In substance, two accounts are kept by the banker and should be kept by the merchant—a collateral account and a cash account—the cash account representing the account kept with the
480 banker, and is the largest. On the other side the money deposited by the merhant with the banker, if the merchaint makes the collection direct, are received by the banker from the merchant's customers with the understanding too that remittances are to be made by the customer to the banker.

By the Court:

Q. That is one account?

A. That is one account, the collateral account. We put on one side all accounts receivable pledged to the banker. Any of these which are cancelled by

payment or by return of the merchandise and a 481
re-sale of the same to a different party, would be deducted from the total amount of the collateral and the net amount of collateral would remain. This is not treated at all as an individual transaction, because it would not be practical; theoretically it could be done, but not practically, so it is treated as a whole. The balance of the accounts pledged, if it is a hundred thousand dollars, a new line of collateral is added, that which has become obsolete or cancelled for any reason, by payment or otherwise, is deducted; and so with the cash. It is, to use the term—it was in the time I was in this business—part of the whole. That was the 482
usual method of doing.

Q. Then we can assume, from the fact that you have divided your answer, that it is not a necessary part of the method of doing business that the banker shall collect the accounts from the customers?

Mr. Wolf: Objected to as leading.

The Master: Yes; the question should be as to what the custom is.

Q. Is it a necessary part of the custom that the banker in every instance shall collect the account of the customer? 483

Mr. Wolf: Objected to as leading.

The Master: The objection is sustained.

Q. What, if any, is the custom with reference to whether or not the banker shall collect the account from the customer or that the merchant assigning the account shall collect it?

A. When I was engaged in that business, I would say, from the experience I gained and from the knowledge I gathered from others employed in the business, in a majority of cases I could not estab-

484 lish a percentage, but I should say, as a rule, that more than fifty per cent. of the accounts were paid directly to the banker; but that did not follow as an essential thing.

Q. Was the collection of the accounts by the banker in those cases where the custom was for the merchant to collect usually offset by other methods of protection to the banker?

The Master: What do you mean by that?

Mr. Cohen: I withdraw the question.

Q. Was the protection to the banker involved in his receiving the money directly from the debtor
485 offset in the cases where the merchant was permitted to receive the money, by any other method of protection to the banker, as a usual rule?

Mr. Wolf: That is objected to as incompetent, irrelevant and immaterial, as leading, and not calling for what the custom is.

The Master: I think the question calls for the conclusion of the witness and does not ask for the custom. The objection is sustained.

Q. In those cases where the merchant was permitted to receive the money on outstanding ac-
486 counts assigned to the banker as collateral, what were the usual and ordinary precautions that you know of that were taken by the banker to protect himself?

Mr. Wolf: Same objection.

The Master: The objection is sustained.

Q. What was the custom in those cases where the banker did not receive the money?

A. I can only speak of those cases I have actual knowledge of.

Q. That is all we expect you to speak of. 487
A. That's all I can speak of.

Mr. Wolf: I object to the question unless he is to testify to the custom.

The Master: The question was as to the custom and I assume that the witness is testifying to the custom, based on his knowledge.

By the Master:

Q. Was there any particular custom in that regard where the merchant himself collected his own bills?

A. I would say from what I learned that where 488
the banker—the banker frequently—I won't say that he always—I don't know—but I have heard frequently of such cases as embodying some one principle of the employee of the merchant—

Mr. Wolf (interrupting): I move that that be stricken from the record as not responsive to the question.

The Master: Finish the answer.

Witness: Placing him under bond for the purpose of an assurance to the banker that the payments received by the merchant on accounts receivable pledged to the banker 489
would be turned over to the banker.

Mr. Wolf: I move that the answer be stricken from the record unless the witness intends to testify that that is the custom.

Mr. Cohen: May I ask the witness a question before the ruling?

The Master: Yes.

By Mr. Cohen:

Q. Do you know whether or not that has been done in a great many instances?

490 Mr. Wolf: That is objected to as incompetent, irrelevant and immaterial, and not proving the custom.

Mr. Cohen: I offer the evidence not for the purpose of proving the custom, but as showing a method or device resorted to by bankers in part to protect themselves.

The Master: It seems to me that the question to which this testimony relates is as to whether or not the transaction in question was an unusual one, and for that purpose I think the question is competent.

Witness: Am I to answer?

491 Mr. Wolf: The only question before your Honor, as I understand it, is the one which I moved to strike out the answer to, and that motion I renewed.

The Master: The motion is denied. I think this testimony is competent for the purpose I have stated.

(Question read by the stenographer.)

Mr. Wolf: I make the same objection to that, that it is not competent, material or relevant, as to specific transactions that took place between the parties, nor is it binding upon the trustee in the absence of proof that

492 it amounted to a custom.

Mr. Cohen: I withdraw the question.

Q. Now, Mr. Williams, in one of the answers which you attempted to give to a question put to you by Mr. Wolf on cross examination, the part of which was stricken out, referring to certain suggestions or remarks which you said you had made to Mr. Dockendorf, you said you were naturally a pessimist and looked on the dark side of things. Will you please explain what you meant by that?

Mr. Wolf: Unless Mr. Williams said that

to Mr. Dockendorf I shall object to the ques- 493
tion.

(After argument the objection was withdrawn.)

Witness: In order that I may make no mistake will you read that part of it, Mr. Cohen, so that I will know precisely what you are asking?

Mr. Cohen: You were being asked, at page 37, after—

Witness (interrupting): If you will allow me to suggest that you read a few lines back, so that I may place it in my memory?

Mr. Cohen: You were asked at pages 35 494
and 6 with reference to talks that you had had with Mr. Dockendorf concerning the solvency or insolvency of the Schwab-Kepner Company, and you thought, in answer to the question, "Did you during this period say in words or in substance to Mr. Dockendorf that you thought there was a fair possibility that the Schwab-Kepner Company was insolvent? A. I think I did." Then on page 37, after some other questions, "Q. Won't you repeat as nearly as you can, either in words or in substance, what you said to Mr. Dockendorf on that occasion and what he 495
said to you?" And the answer was, "I can only tell you this—that Mr. Dockendorf disagreed with me entirely." Then you were asked again to state as nearly as you could what you said to him and you answered "Simply I know that, as a credit man and as an accountant, I am inclined to ask myself what is the worst that can happen. I am a pessimist; that is my natural inclination." My inquiry now is what you meant by that language?

496 Mr. Wolf: It is not in the record any more because it was stricken from the record, and I object to it on that ground.

The Master: I do not think you are entitled to examine him on anything that was stricken from the record. The objection is sustained.

Q. At page 16, Mr. Williams, in answer to the question what Mr. Beckendorff said to you, you said, "He thought I had taken a too extreme out in the matter."

A. Yes.

497 Q. Now, Mr. Williams, bearing in mind your testimony at that time, had your experience as a credit man effected your mental attitude generally in the answer upon the solvent or insolvent condition of the concern? Answer the question.

A. After sixteen years, during the greater part of which I have been in direct contact either with credits or accounting, or both together, I want to say that the responsibility which a credit man bears to his principal and to his customer, separately and to those two combined, that, as I understand, he must look always for the worst that can happen. He may not be always governed by that, but if successful that is the question he must ask himself.

498

Q. In your experience, Mr. Williams, has it occurred or did it occur prior to your conference with Mr. Beckenbdorff that your principal disagreed with you as to the financial condition of the concern, as to which you saw the dark side?

Mr. Wolf: That is objected to as incompetent, irrelevant and immaterial.

The Master: I do not see how that is competent. (After argument.)

Mr. Wolf: I call the Referee's attention

and also Mr. Cohen's attention, to the fact that this so-called man of straw has been constructed only in conversations held between Mr. Williams and Mr. Dockendorff. 499

The Master: The objection is sustained.

Q. Did you at any time make any actual inventory of the property of the Schwab-Kepner Company?

Witness: I will have to ask you to define the word "inventory."

Q. Did you ever take stock, to ascertain the merchandise?

Witness: Of the merchandise? 500

Mr. Cohen: Yes, sir.

A. No.

Q. So you never knew as a fact at any time what amount of merchandise you had on hand?

A. Not until the receivership.

Q. And then you only knew the amount of merchandise which they then had taken?

A. I knew the amount of merchandise and the form of it, as reported to me by the Treasurer of the company.

Q. But you had not made an inventory yourself? 501

A. I had not.

Q. So you did not know it at that time, and you were basing that on hearsay?

Mr. Wolf: I object; he has stated what the facts were; let the Referee say whether that is hearsay or not. The facts are in the record.

Witness: When you say "hearsay," do you refer to the inventory of the Receivers?

Mr. Cohen: I mean by knowledge, some

502 thing that you did yourself and that you know yourself, not what someone else told you.

Witness: At what period are you speaking of.

Mr. Cohen: At any period did you of your own knowledge at any time know how much merchandise there was there?

A. I did not.

Q. Do you know today of your own knowledge?

A. I do not.

Q. Do you know today of your own knowledge how much merchandise the Schwab-Kepner Com-
503 pany had on hand at any time—

A. (interrupting): I do not.

Q. —at which you were at the Schwab-Kepner Company?

A. I do not.

Q. You attempted in your examination, in answer to questions put to you by Mr. Wolf, to give an estimate of what you thought was the amount of merchandise at that particular time, did you not?

A. I so stated.

Q. Now, did you attempt to do anything more
504 than to give a rough estimate based on what you understood to be the usual equity in the merchandise securing the loan?

Mr. Wolf: That is objected to as calling for a conclusion.

(Question read by the stenographer.)

The Master: I think that is objectionable. I think you should show, on the redirect, what he did.

(After argument.)

Mr. Cohen: I submit that I am entitled

to cross examine him on that point, because it is not naturally redirect, and that is the reason I made that point here to-day 505

(After argument.)

The Master: My recollection is that Mr. Wolf led the witness very little.

(After argument.)

The Master: I followed that examination very closely and Mr. Wolf asked the witness about the trial balances and how he made them up, and did not lead him at all. I think you ought to be held to a redirect examination. I sustain the objection to this question.

506

Q. State whether in making your opinion of the condition of the Schwab-Kepner Company, which you communicated to Mr. Dockendorff, you took a conservative or a liberal attitude toward the assets and liabilities as they were disclosed to you.

A. I did not criticise the liabilities; I nowhere recall in my testimony that I gave any criticism of the liabilities; as to the assets, I undoubtedly did state what I believed to be conservative.

Q. And by conservative you mean what.

A. My attitude of mind is to ask what is probably the worse.

507

Q. What definite steps did you take, before expressing the opinion to Mr. Dockendorff whatever it was, to ascertain the actual value of those assets?

A. If I had undertaken to ascertain the actual value of the assets before I spoke I wouldn't have opened my mouth. I don't know that yet.

The Master: That does not answer the question. The question is what definite steps did you take before expressing what-

508 ever opinion you did to Mr. Dockendorf to ascertain the actual value of the assets?

Witness: I don't know how to answer that question.

Q. Did you take any definite steps?

A. I have been at work there with a view to ascertain what the accounts were worth. We knew that some of the accounts there were not collectable. All the time that I could spare from the daily duties entailed in that position I spent in that endeavor.

Q. Mr. Williams, as a credit man are you accustomed to taking a statement showing assets
509 and liabilities, and forming an opinion upon the basis of that statement?

A. Unquestionably.

Q. Can you disclose any general attitude which you personally took in making an estimate based upon an examination of a financial statement?

A. I generally accept the liabilities as stated, for the reason that I have never found the liabilities understated. The assets, I take several items as they appear under headings and, either mentally, if it be a short statement, or with pen or pencil, if it be a longer one, I make such deductions as my experience and judgment lead
510 me to believe are proper. In that I would also take into consideration, presuming I did have personal knowledge of the people, as to the attitude, of the man making it.

Q. In the conversations which you had with Mr. Dockendorf did you discover that there was any difference of opinion between you as to the Schwab-Kepner people themselves.

Witness: I don't like to answer that question in that form, Mr. Cohen.

Mr. Cohen: Answer it in any form you like.

Witness: I don't like to answer that. 511

Mr. Cohen: Well, what is the difficulty with it?

Witness: Why, I would prefer to answer as to Mr. Kepner, as he was the active one.

Mr. Cohen: Answer it that way then.

Witness: Now, I understand your question is directed as to our estimate of Mr. Kepner as an individual.

Mr. Cohen: Yes, as to whether there was any difference of opinion between you and Mr. Dockendorff on that score.

A. Yes, I think it is fair to say there was, 512
distinct.

Q. What was that difference of opinion?

Mr. Wolf: Objected to as calling for a conclusion.

Witness: I beg to be excused from answering that question, because the conversations were fragmentary. I made no notes, and what is in my mind is the substance.

The Master: State what opinion you stated to Mr. Dockendorf and what opinion Mr. Dockendorff expressed to you.

Witness: I am afraid I cannot answer 513
that.

The Master: I do not see how you can testify as to a difference of opinion unless you can tell what the opinion of the one and of the other was.

Witness: I cannot put it into words.

The Master: Well the substance of it.

Witness: If you will allow me to boil the substance of these conversations down and let me tell you that way, I can do it.

Mr. Cohen: Tell us the substance.

514 Witness: I will tell you the substance as it was in my mind.

The Master: A moment ago I understood you to state what the difference of opinion was.

Witness: No, I was asked if there was a difference.

The Master: You said there was, and then you were asked what the difference was. You were asked to state what opinion you expressed to Mr. Dockendorf and what opinion Mr. Dockendorf expressed to you in regard to Mr. Kepner. You were not asked
515 to state any specific conversation or precise words.

Witness: I am not trying to evade any answer.

The Master: You said there was a difference of opinion.

Witness: Yes; I gather that from what remains in my mind from all these conversations.

The Master: Can you tell what the difference of opinion was?

Witness: I can as I understand it.

The Master: Can you tell what opinion
516 you expressed to Mr. Dockendorf and what opinion he expressed to you?

Witness: In substance, yes.

The Master: Well, answer that question.

A. I think I can say in two or three words what opinion I expressed. I said I held Mr. Kepner as an optimist of optimists; a man who would look cheerful and feel cheerful as long as he saw his daily wants provided for.

Q. Did you express any other opinion in regard to Mr. Kepner?

Witness: I am frank to say that I do not care to answer that; I don't know how. 517

Mr. Cohen: You said there was a difference of opinion. Now in what respect did Mr. Dockendorf's opinion differ from yours?

A. I think the feeling in my mind has always been—

Mr. Wolf (interrupting): I object to that.

Witness: I cannot tell how or when or in what words Mr. Dockendorf expressed his opinion, but he thought my opinion of Mr. Kepner as a business man was rather harsh. 518
He thought more favorably of him than I did. He thought that— Mr. Kepner is to me a very agreeable man, but I look on him as too optimistic.

Q. Isn't it a fact that that feeling you had in regard to Mr. Kepner affected your judgment of his financial condition?

A. I stated a while ago that where I had not any personal knowledge of people, that that also guided me in deductions that I drew.

Q. And that knowledge or opinion in this particular case did influence you?

A. Undoubtedly. To what extent I don't know. 519

By the Master:

Q. What led you to the opinion of Mr. Kepner — was it his optimism?

A. I don't know that I can say anything beyond the daily contact with the man; his feeling always of the future, whether it were to-morrow, next week or next month, was always rainbow colored.

Q. Did the fact that he was indebted to the

502 Schwab-Kepner Company, did that advance to him influence your mind as to his optimism?

A. I hardly think so.

Mr. Cohen: I don't think the Master has any right to ask leading questions.

Q. You can't tell me anything more than that?

A. When you are in daily contact with a man it is difficult to pin down any one thing. There was no reason at that time to fix it in my mind. I can only give you general impressions, the residue that remains, which is perhaps more correct than any individual conversation if I could recall it.

521 By Mr. Cohen:

Q. On cross examination, Mr. Williams, you said something about the account between the Schwab-Kepner Company and Mr. Dockendorf being in an satisfactory shape. What did you mean by unsatisfactory?

A. I think if you will refer to the testimony, that I am citing Mr. Dockendorff's expression or conclusion, of one of the reasons why he needed somebody there.

Q. What did you understand about that at that time?

522 A. I didn't know what to understand; I was not aware—nothing had been stated to me in any specific terms, simply that their bookkeeping methods were loose, were not as they should be. I don't recall any specific citation.

Q. Did you understand by that that there was anything fraudulent or dishonest in reference to the Dockendorf company that had taken place?

Mr. Wolf: That is objected to as incompetent, irrelevant and immaterial and as calling for a conclusion.

The Master: Objection sustained.

Q. Did Mr. Dockendorf say anything to you at 523
that time that led you to understand that "unsatisfactory" meant anything more than unsatisfactory bookkeeping or unsatisfactory attention to business.

Same objection.

The Master: Objection sustained.

Q. What, if anything, did Mr. Dockendorf say to you that enabled you to understand what he meant by the statement that the condition of the business was unsaisfactory?

A. I don't think Mr. Dockendorf at that time specified anything; I have no recollection that he 524
did, but I am not prepared to swear that he did not.

Q. But when you first went up to the Schwab-Kepner Company in what respects did you actually find unbusinesslike methods?

A. I speak of those things which I found, first because I directed my attention that way. I found that there was a great deal of delay in the settlement of claims or disputes.

Q. What do you mean by that?

A. I mean that if, for instance, goods had been shipped to some customer and the customer desired to return them, or did return them, or made a claim in some way which would need to be ad- 525
justed promptly, there was apparently a lack of decisiveness in the arriving at a conclusion with that customer, getting the matter disposed of.

Q. Was that all you discovered?

A. No, I can't say that it is. I am speaking of those things chiefly in my mind.

Q. What else did you discover?

A. I found also delays in filling orders, they would take chances in shipping goods a considerable distance, although they had knowledge that those goods ought to be shipped before, and with-

526 out communicating with the people to know whether they would be received. There was a general method of the transaction of the business there that might be termed a loose way.

Q. Do you mean fraudulent?

A. No, not fraudulent.

Q. Or careless?

A. I am speaking of carelessness. For one thing, one of the gentleman there, Mr. Corbett, whose business lay very largely with the settlement of claims, disputes and so on is a man that is slow to decide a thing.

Q. Now in what respects did these loose, care-
527 less methods affect Mr. Dockendorf's conduct of the business with the Schvab-Kepner Co.?

A. I can't answer that I don't know; I cannot tell you how they affected his conduct.

Q. I mean, in the dealings between the two did anything happen so far as you know?

A. I am afraid I am a little dull. I don't understand that question. I presume you refer as to whether these things I speak of acted to the detriment of Mr. Dockendorf's or his partner?

Q. Yes.

A. Then we will leave out the word conduct.

Q. You may frame your own question.

528 A. Why, undoubtedly they were to the detriment of Dockendorf & Company.

Q. In what respect?

A. Why, the collateral, which apparently they held was not good collateral; they reduced his security.

Q. How?

A. By the fact that there were no goods; there were no payments to be made, which he presumed would be made; that is, some of the payments which he had a right to presume would be made would not be made.

Q. In short an account would be sent to Dock- 529
endorf as security, or as collateral, and subsequently the merchant would return the merchandise for some reason or other because of the careless transaction of the business of the Schwab-Kepner Company; that account would remain apparently an open account while as a matter of fact it was not a real account?

A. Correct.

Q. And isn't that what you meant when you used the word "fictitious" account?

A. I nowhere used the word "fictitious" account; I disclaim the use of that word.

The Master: I think Mr. Wolf used that 530
word.

Q. By a fictitious account you understand an account created?

A. Created out of air?

Q. Created out of air, but an account created out of an order at the time, and the customer for some reason returns the goods, either because they don't come up to the contract, or because they are damaged, and the account thereby becomes no account; that is not a fictitious account?

A. No; it was in good faith at the beginning.

Q. But the security may have changed? 531

A. It has vanished to us temporarily, until merchandise is furnished to meet it.

Q. Then in other words if the merchant does not notify the banker of the changed situation, the banker goes on the notion that he still has the security originally given to him?

A. He cannot have any other notion. He holds them as collateral, and the advances are based on them until either the overdue date agreed upon between them is reached. That collateral then is charged back against the merchandise collateral.

532 or notify them that their credit has been over-issued.

Q. What do you mean by the overdue date?

A. There is a custom that an account maturing on the first day of January, shall have twenty or thirty days, varying with the nature of the business, and if not paid by a certain date it shall be charged back to the collateral account. It becomes dead as far as the advance was concerned, but it shall remain as collateral.

Q. In other words, if the merchant has turned over to the banker fifteen thousand dollars of accounts as collateral security for an advance of ten
533 thousand dollars, and five thousand dollars of those accounts pass the overdue date, that five thousand dollars as collateral for the ten thousand dollar advance cannot be used as the basis for a further advance on the same percentage basis?

A. That is true, on the principle that it is part of the whole.

Q. Now, in addition to that point, if the understanding is the general understanding to which you have testified, that the merchandise covered by the account remains as security to the banker, how does the banker get his merchandise where the customer returns the goods?

534 A. Mainly by immediate re-sale of the goods.

Q. That is, the goods are sold to somebody else?

A. Yes, and a new account created.

Q. Is that what happened in this case?

A. In a majority of cases, yes.

Q. Isn't a credit thus issued, to cancel the other account?

A. It should be.

Q. The first account?

A. It should be, yes.

Q. Isn't it a fact that, because of your experience with Ladenburg, Thalman & Company, and as a

credit man, you were put up there with the Schwab-Kepner Company for the very purpose of seeing that these careless methods should be stopped? 535

A. I presume so.

Q. And you were to render services to the Schwab-Kepner Company and to Dockendorf, in that you were to see to it that the banker was promptly notified where the accounts' condition was changed by the return of any merchandise, and that the Schwab-Kepner Company took proper steps to make adjustments with their customers?

A. That, as you have stated it, I think is undoubtedly my duty.

By the Master. 536

Q. Had he found as a matter of fact that the Schwab-Kepner Company in regard to accounts where goods have been returned, was it the custom to notify Dockendorf of the cancelled account-

A. They should have done so.

Q. Had they done so?

A. From my reports to the Receivers, there was a very large—

Mr. Cohen (interrupting): I object.

The Master: The question is what you found.

Witness: Not always; and those exceptions were sufficient in number to make a distinct difference in the collateral account of Mr. Dockendorf. 537

Q. Now, Mr. Williams, did you at any time, either before or after your employment, know of any arrangement by which Dockendorf had induced the Schwab-Kepner Company to go on with their business for the purpose of paying off and liquidating a pre-existing indebtedness either of himself or anybody else? I will withdraw that

question. In paragraph twelve of the amended answer it is alleged, "that notwithstanding the fact that the said Dockendorf at all of the said times knew and had reasonable cause to believe that the said Schwab-Kepner Co., was hopelessly and totally insolvent, and unable to pay its debts in full, and that it would ultimately and within a short time be petitioned into bankruptcy or other insolvency proceedings, and its assets administered by a Court of competent jurisdiction for the benefit of its creditors, said Dockendorf continued to loan the said company moneys for the purpose and with the intent on his part and on the part of said company, that said company should continue its business as theretofore conducted, purchase goods, wares and merchandise from the persons, firms and corporations from whom it had theretofore been in the habit of purchasing goods, wares and merchandise causing said goods, wares and merchandise to be sold to customers of said Schwab-Kepner Co., and outstanding accounts created thereby, and said Dockendorf further caused such new outstanding accounts so created, to be transferred to him." And in Paragraph 14, "That said accounts of debtors of said Schwab-Kepner Company were so created and assigned to the said Dockendorf by the said Schwab-Kepner Co. by and with the full knowledge, consent and connivance of the said Schwab-Kepner Co., and the said Dockendorf, and for the purpose of securing the repayment to said Dockendorf in full of his said claim." Did you during your employment become aware of any such agreement or arrangement?

A. I never heard of it.

Mr. Wolf: That is objected to as incompetent, irrelevant and immaterial, and as calling for a conclusion.

The Master: It seems to me that that does call for a conclusion. It seems to me that that might be determined from all the circumstances in the case, without there being any definite understanding between the parties that that was the intention. 541

Mr. Cohen: Here is the point of the question. If there was such an agreement or understanding, this man must have been a party to it, because he was the machinery through which this wicked, malevolent intent was carried out.

The Master: I do not think that a negative answer is of any value, because I think that has to be found, if found, from all the circumstances of the case. Of course, it is perfectly possible that there was such an arrangement, which was not communicated to this witness. 542

(After argument.)

The Master: I overrule the objection. Answer the question, Mr. Williams.

Witness: Now, the question, in substance, is, did I know of any arrangement between these two parties, for the purpose of doing such things as they did?

Mr. Cohen: Yes. 543

A. I did not have any knowledge, whatever, of any arrangement.

Q. So far as you knew, were you put there for any such purpose?

Mr. Wolf: I object. Let him state why he was put there.

The Master: The objection is sustained.

Q. Were you aware of the fact, Mr. Williams, that there was a definite percentage of the amount

544 of loan to be made against the collateral of the assigned accounts by Mr. Dockendorf?

A. Only from practice.

Q. What was that amount?

A. 80 per cent. of 96 per cent. of the face value.

By the Master:

Q. Were you told when you first went there that that was the percentage?

A. I don't know how I got that percentage, but I got it.

By Mr. Cohen:

545 Q. After you were there did you at any time become aware that the amount of the loans which were being made to the SchwabKepner Company exceeded this 80 per cent. of 96 per cent. of the collateral?

A. I can't answer that question.

Q. So you don't know?

A. No.

Q. Why not?

A. So many elements enter into it, it is impossible.

Q. I beg pardon.

A. So many elements enter into it, it is impossible.

546 Q. Well, you don't know, then, that there was less than 80 per cent. of 96 per cent. loaned at any time?

A. There might actually have been less.

Q. There might not apparently been less—I am asking from knowledge.

A. I decline to answer that question, in justice to either party.

By the Master:

Q. You mean you don't know.

A. I don't know; so many elements go into it.

Q. Did you ever try to figure it out? 547

Witness: As to the actual?

The Master: Yes.

A. Never. I can't do it now. If the business stopped, I can't do it.

By Mr. Cohen:

Q. Did you receive any instructions from Mr. Dockendorf, when you went up to the Schwab-Kepner Company, to do anything other than would protect Mr. Dockendorf, and protect the rights of any other creditors?

Mr. Wolf: I object. Let him state what 548
he was told.

The Master: The objection is sustained.

Q. What, if any, instructions did you receive with regard to preferring creditors?

A. Preferring creditors? I never had any instructions at all.

Mr. Wolf: That is objected to as calling for a legal conclusion.

The Master: I don't understand what it means.

Q. Do you understand what preferring creditors 549
means?

A. I assume from your question that you mean as to whether Dockendorf was to be taken care of to the exclusion of everybody else.

Q. Yes.

A. I had no such instructions.

Q. At any time?

A. No, sir. We all understood that Mr. Dockendorf was presumed to have security, that some of the banks that loaned money on merchandise are supposed to have security of the pledgers also. There was no talk about it.

550 Q. In what respect was the situation changed by your going up there for Dockendorf?

Mr. Wolf: That is objected to as irrelevant, immaterial, incompetent and calling for a conclusion.

The Master: The objection is sustained.

Q. Did you do anything while you were up there to change the situation of the general creditors in any respect?

Mr. Wolf: Same objection

A. I didn't rob anybody.

551 The Master: The objection is sustained.

Q. Do you know of anything that you did while at the Schwab-Kepner Company that gave to the Schwab-Kepner Company any new or additional advantage in the way of security than they had under their original agreement?

Mr. Wolf: Same objection.

The Master: The objection is sustained.

Q. Was there any instruction of any kind ever given to you by Mr. Dockendorf that while you were at the Schwab-Kepner Company you were
552 to secure any additional security to that to which he was entitled under his agreement with the Schwab-Kepner Company?

Mr. Wolf: The same objection.

The Master: Objection overruled. I think we have covered that pretty fully.

Mr. Cohen: You may answer that question.

The Master: Answer that question.

(Stenographer read the question.)

The Master: That calls for a construc-

tion of the agreement which I did not notice when the objection was made. 553

(Question withdrawn.)

Q. Did you at any time receive any instructions or directions from Mr. Dockendorf to secure any other collateral or security from the Schwab-Kepner Company than the accounts receivable which were from time to time submitted for additional advances, and a notification to Mr. Dockendorf of the return of any merchandise to the Schwab-Kepner Company?

Mr. Wolf: That's objected to.

The Master: I do not think he has testified that he received any such instruction as that. My understanding of the testimony is that he was told to go and see that the books and accounts were properly kept. 554

The objection is sustained.

Q. Were you at any time directed to get for the Schwab-Kepner Company, or to get from the Schwab-Kepner Company for Mr. Dockendorf any new or additional security?

Mr. Wolf: That is objected to as likewise calling for a conclusion.

The Master: It seems to me that the question is too general, although it is not objected to on that ground. 555

Mr. Cohen: Then I understand your honor to rule that there is no evidence, so far as this witness is concerned, that he received any instructions to secure any new or additional security, other than that provided for in the contract between Dockendorff and Company and the Schwab-Kepner Company; that his duties were

556 confined solely to straighting out the books of the concern and seeing that proper notice was sent to Dockendorff of any change in accounts due from the Schwab-Kepner Company to its customers.

(After argument.)

The Master: My understanding of the testimony of Mr. Williams, as to the instructions which he received from Dockendorff as to his duties in the Schwab-Kepner Company is as set forth in Mr. William's testimony at page 8 of the book of testimony of December 23, 1910.

557 On application of counsel for the Receivers, the petitioner is directed to produce at the next hearing his books of account, showing his transaction with the Schwab-Kepner Company from May 1, 1910, to the time of the receivership, in December, 1910.

At this point further hearing of the matter was continued to Friday, January 20th, 1911, at half past ten o'clock in the forenoon, at the same place.

558

BANKRUPTCY COURT. 559

ESSEX COUNTY.

In the Matter
of
THE SCHWAB-KEPNER COMPANY,
a Corporation, Bankrupt.

Transcript of shorthand notes of examination of witnesses and so forth, in the above entitled matter, before Edwin G. Adams, Esq., Referee in Bankruptcy, as Special Master, at the rooms of the New York County Lawyers' Association, 165 Broadway, in the City of New York, on Friday, January 20th, 1911, pursuant to adjournment January 13th, 1911. 560

Appearances as before noted.

Mr. Cohen: Mr. Master, at the last hearing, you made a direction that Mr. Dockendorf produce his books, and, while it does not appear of record, you suggested that perhaps counsel could agree upon the method of securing the information that the Receiver and his Trustee and representatives desired without the production of a great mass of books. Mr. Wolf, in behalf of the Trustee and Receiver, requested of us certain information from our books. After the hearing counsel discussed the question together and we said we had no objection to furnishing the lists or schedules already prepared from our books, for verification by an accountant of their selection, provided we could know enough of the accountant to feel secure that he would not pry into any other matters but 561

562 these matters, and counsel for the Receiver suggested three names, one of whom we accepted, Suffern & Son, and in order to facilitate the investigation we had this schedule that we had prepared typewritten and submitted them to counsel for the Receiver and Trustee—one of them was submitted before and two are submitted to-day, with the understanding that Suffern & Son are to have opportunity to examine these and verify them from our records before they are put in evidence. That is offered by way of compliance with your Honor's direction that
563 the records be produced in full.

The Master: Is that arrangement satisfactory?

Mr. Wolf: It is satisfactory in part. I do not want any misunderstanding. It may be that the preparation of these schedules will greatly facilitate me in the closing of the case, but from the investigation I have made I think there is a great deal of information and data in Mr. Dockendorf's books that is necessary for the Trustee to have in order to properly present the issues in this case to the Special Master. It is not our intention
564 to pry into Mr. Dockendorf's books except to enable us to learn what the relations were between Mr. Dockendorf and the Schwab-Kepner Company, but in order to learn that I think it is necessary for us to have a great deal of data that is apparently not shown on these two sheets or schedules that were delivered to me this morning, and it seems to me, therefore, that the suggestion I am about to make is one that is calculated to bring about a speedy conclusion of the hearing, and that suggestion is this: that the account-

ant shall have the privilege of checking up 565
these statements and obtaining any other information he wants from the books of Mr. Dockendorf, concerning Mr. Dockendorf's transactions with the Schwab-Kepner Company. I don't want anything more, but I don't want to be considered as limiting myself to anything that is contained in these schedules.

Mr. Cohen: I think Mr. Wolf misunderstands the situation. There has been no effort on our part, nor on the part of Mr. Dockendorf, to exclude anything that is on our books or records in reference to the re- 566
lations between Mr. Dockendorf and the Schwab-Kepner Company that might possibly have any bearing on the case; and we have assumed that the accountants who would verify these schedules would necessarily ask for and be entitled to receive every record bearing on the transactions with the Schwab-Kepner Company, and if there is anything in the records of Mr. Dockendorf as to his relations with the Schwab-Kepner Company which the accountants discover has any bearing on this case, we assume that this will be received in evi- 567
dence. We have prepared these schedules in this form, sir, because they present the information that the Master will need on the issue as presented at the last hearing. All that we desire to avoid is the necessity of bringing here before you a lot of records that are more or less interwoven with the records of transactions with other concerns, and we discussed the name of the accountant in order that we might be certain that in going over our records for the purpose of making

568 up a list and finding out the transactions with the Schwab-Kepner Company, he would not at the same time, if he did find anything else valuable in a business way to competitors, or anything of that sort, disclose that. We have gone to considerable expense and labor in preparing these records, and we recognize that the other side is not obliged to accept their accuracy without verifying them from their original sources. We do not understand that Mr. Wolf is to be limited to those schedules; if there be any other information in our books we shall be very glad
569 to let him have them. We have nothing to hide in this matter.

The Master: I think the situation for the present can well be left to the arrangement between you gentlemen; there seems to be no misunderstanding between you; if occasion arises for me to determine anything later, I will do so at the proper time. I think the understanding appears sufficiently upon the record at the present time.

CYRUS WILLIAMS, resumes the stand.

Redirect examination continued by Mr. Cohen:

570 Q. Mr. Williams, it appears from the record of your last examination that in consequence of various colloquies between the Master and counsel, you did not finally complete the answers to the questions relating to the manner in which you arrived at the opinion that this concern was not likely to continue solvent after a certain period, and the manner in which you made an estimate of the value of the merchandise. I wish you would state now in detail precisely what method, if any, you used in valuing the merchandise, in the absence of an ac-

tual stock taking or inventory, for the purpose of 571
forming the opinion which you have testified you communicated to Mr. Dockendorf.

Witness: I don't know whether to answer or not there are so many objections.

The Master: Yes, go on.

Witness: This is in regard to merchandise, Mr. Cohen?

Mr. Cohen: Yes, sir.

A. With the exception of the merchandise which was in the immediate custody of the Schwab-Kepner Company, the rest of it was all pledged, as I remember it.

572

Q. Proceed, Mr. Williams.

A. I took the amount of the loans made on the pledge of the merchandise, added thereto what I believed to be the proper equity, from the information I had as to the arrangement between the loaners of the money and the Schwab-Kepner Company; I made a reasonable allowance—true, it was not a large one—for such merchandise as I might term to be loose—that is not subject to pledge; and I thereby arrived at a conclusion, which was not expected by me and not claimed by me to be accurate, but sufficiently accurate, as I believed. This is only an expression of opinion sufficiently accurate, I 573
believe, in my judgment, to help out about the determination as to the probable condition of the Schwab-Kepner Company.

Q. You said, in answer to the last question, that in making that estimate you eliminated such merchandise as was in the immediate custody of the Schwab-Kepner Company?

A. I mean by that in their warehouse at No. 66 Leonard Street.

Q. Approximately how much merchandise did they have at that time in their warehouse at No. 66 Leonard Street?

574 A. I am unable to state for sure. I did not make any memorandum at the time, or did not commit these things to memory in detail at the time, the amount which I finally arrived at I made a pencil notation of, but the details of that I did preserve any memorandum of, though I undoubtedly placed some pencil figures on paper for my guidance.

Q. You have some memory as to the relative proportion of the merchandise at Leonard Street and the amount of advances?

A. I cannot state that accurately.

Q. Give me your best estimate of it approximately?

575 A. Stating this merely as a matter of recollection, and I do not claim that it is accurate, there were two classes of merchandise in the custody of the Schwab-Kepner Company at their warehouse No. 66 Leonard Street; some there just temporarily to be delivered to customers, and accounts where goods had already been charged up, and some of it which had come in there, as I say, free from lien; my recollection is, but it is only recollection, I will not vouch for its accuracy, that the free goods i approximated at something like ten thousand dollars. I want to distinctly disclaim any other than merely a recollection. I have no means of referring
576 to anything. I probably made pencil data on some sheet of paper at the time, and having satisfied myself destroyed it. I have nothing to refer to; it is a pure matter of memory.

Q. Then it is your best recollection at the moment that the amount of goods free from lien at the Schwab-Kepner Company's place was a relatively small quantity?

A. Yes.

Q. Not more than ten thousand dollars?

A. I thought that that covered it. That is my

recollection of it. I am speaking now entirely 577
from recollection.

Q. Now, the goods that were held temporarily for shipment you are not including in your statement of goods free from lien, and that, I take it, is because of your knowledge of the fact that those goods were covered by the contract with Dockendorff and Company?

A. That is correct.

Q. And you assumed that all goods that were being held for fulfillment of their account, or orders on which Dockendorff had liens, were subject to those liens?

A. That is correct. 578

Q. Now, after this occasion, have you any recollection as to whether or not the amount of free goods, or goods free from lien, either to Mr. Dockendorf or to the banks, was greater or less than ten thousand dollars?

The Master: At what time was this?

Mr. Cohen: I am referring, Mr. Williams, to the time which you fixed in your examination by counsel for the Receiver and Trustee, as to the time when you communicated your opinion to Mr. Dockendorff.

A. Early in August.

Q. That was early in August? 579

A. Yes; somewhere between the first and tenth; probably the third, fourth or fifth.

Q. Now, please answer the question immediately preceding the last.

Witness: I will have to ask that the question be read.

(The stenographer read the question as follows: "Now, after this occasion, have you any recollection as to whether or not the amount of free goods, or goods free from

580 lien, either to Mr. Dockendorf or to the banks, was greater or less than ten thousand dollars.")

Witness: I suppose, Mr. Cohen, what you wish me to answer is whether there was any change in substance, not referring to any little technicality—whether there was any substantial change in one direction or the other?

Mr. Cohen: Yes, sir.

A. Not that I recall at this moment.

Q. Now, before August, when you formed this opinion as to the value of the merchandise, did you
581 notice that there was any substantial difference in the quantity of goods free from lien in the Schwab-Kepner Company place?

Witness: My answer is going to be subject to my best recollection.

Mr. Cohen: That is all we expect of you.

A. Yes. August 2nd, I think it was, thereabouts, was the first time, as far as I can recollect, that I put any figures down on paper representing the probable value of the merchandise. Up to that time—no—that is the answer. Strike out "up to that time."

582 Q. Well, prior to that time had you observed, while at the place of business of the Schwab-Kepner Company, the quantity of merchandise on hand?

A. I may say that I rarely went down to where the goods were stored. My judgment was reached from other sources.

Q. Well, then, you are not prepared to say to-day, are you, that th[illegible]e was any period of time prior to the first or [illegible]econd of August, while you were there, that the quantity of free goods was greater than this sum of ten thousand dollars?

Mr. Wolf: I object to that as containing 583
an improper inference. He has testified
that he could not say.

The Master: The objection is sustained.

Q. Will you say, Mr. Williams, that there were more free goods between the 16th of May and the 1st of August than ten thousand dollars?

A. I know nothing about matters prior to the early part of July. My first few days in the place were merely getting acquainted, to see what business existed, and so on. I cannot answer for anything prior to, say, within a few days of the 5th of July.

Q. Two days after? 584

A. I say a few days prior to that. I have no knowledge.

Q. Well, do you know of any circumstance which you discovered after August from which you could determine that the quantity of goods free from lien between the time you went to the Schwab-Kepner Company and the 5th or 6th of August had become less?

A. My recollection is that there was no substantial change as to the loose goods. I only state that as a recollection.

Q. And by loose goods you mean what?

A. I mean goods free from pledge. 585

Q. Then, may we infer from your answers, Mr. Williams, that substantially, with the exception, say, of ten or fifteen thousand dollars of merchandise, it was the normal condition of the business of the Schwab-Kepner Company that all of the merchandise except this sum was pledged in some form or other?

A. I cannot answer that question, sir. You asked the normal condition.

The Master: He means during the time you were there.

586 Mr. Cohen: During the time you were there?

Witness: I call that an abnormal condition.

By the Master:

Q. Well, was the abnormal condition the normal condition while you were there?

Mr. Cohen: That's what I want. I accept Mr. Rosenberg's suggestion to substitute the word "usual" for the word "normal."

Witness: Now, I would like to have the
587 question as amended.

(Question as amended read by the stenographer as follows: "Then, may we infer from your answers that substantially, with the exception, say, of ten or fifteen thousand dollars of merchandise, it was the usual condition of the business of the Schwab-Kepner Company that all of the merchandise except this sum was pledged in some form or other?")

Witness: I learned early in July, I don't know what date, whether it was the 5th or 6th, or whether it was the 10th—that in
588 substance, the merchandise of the Schwab-Kepner Company was under pledge. I use the words "in substance" as applying substantially to the whole of it.

Q. And what was its condition as to its accounts receivable?

A. Accounts receivable, I was informed and their methods of business indicated, were all pledged, except in a very few insignificant instances, where they may have sprung from something other than sales.

Q. Now, Mr. Williams, while you were there, so

far as you represented Mr. Dockendorf, did you en- 589
deavor in any way to suppress or conceal this situation from any of the general creditors?

Mr. Wolf: I object to that as incompetent, irrelevant and immaterial, and calling for a conclusion.

(After argument.)

Mr. Wolf: I have no objection to counsel asking that question in a proper way and proper form, because we do charge that and intend to charge it, but that we should be foreclosed by a conclusion of the witness, I think is improper.

Mr. Cohen: The question is withdrawn. 590

Q. Mr. Williams, what, if anything, did you do while you were there, representing Mr. Dockendorf and the Schwab-Kepner Company, to suppress or conceal the fact that the merchandise and the accounts receivable, of the Schwab-Kepner Company, with the exception of approximately ten thousand dollars, were under pledge?

Mr. Wolf: I make the same objection, that it calls for a conclusion.

(After argument.)

The Master: The objection is overruled.

(Question read by the stenographer.) 591

Mr. Rosenberg: I think that question clearly calls for a conclusion,—what did he do to conceal; that involves the operation of his mind, what he did for the purpose of concealing. Mr. Cohen should ask whether Mr. Williams told anybody.

The Master: This is subject to cross examination. You can call his attention to anything that, in your opinion, was designed to conceal or suppress information. I think

592 it calls for a statement of fact, as to what he did.

Witness: Am I directed to answer?

The Master: Yes; answer the question.

A. I think I can best answer that by saying that my duties did not bring me in contact with any of the creditors on that point. I very seldom had anything to do with the purchase accounts or the parties from whom they sprung. I may possibly, on one or two occasions, have suggested dates on which notes were to be given, would mature, so as not to bring them in conflict with notes already given and bring too large an amount due at any
593 one time. I never discussed the affairs of the Schwab-Kepner Company with any creditor, and was never asked to do so, other than Mr. Dockendorf.

Q. You explained the situation—

A. (interrupting): If you want a direct answer I am not aware of anything I did at any time to conceal the condition of the Schwab-Kepner Company unless I was expected to publish it in the newspaper.

Q. Now, Mr. Williams, there are various methods which you, as a credit man, are familiar with, by which those extending credit to a con-
594 cern ascertain the financial condition of the firm to whom the credit is to be extended, are there not?

A. There are.

Q. Will you please state what these general methods are?

A. I am speaking only of my own experience as gathered from such methods as I employed, and by such methods as I knew to be employed by credit men with whom I came in contact, such methods as I know to be employed today; and one of the principal methods, where transactions

rm into any large sum, is to request from the 595
merchants a statement of their financial condition.

Q. State all the matters in connection with it.

A. There is also in use—in general use—or I should say, to be grammatical, there are the sources of the mercantile agencies; in addition to that the making of inquiries of other parties who are likely to be creditors, or to have been creditors of the Schwab-Kepner Company—as to what their experience had been, what kind of credit had been given, how payments had been made, and what the judgment of the parties of whom the inquiry was made, might be, as to the condition of the concern.

Q. In your experience as a credit man, in securing such a financial statement from the merchant, is it customary to inquire as to what of the assets are pledged? 596

A. Where the liabilities are large, any active credit man will make inquiries in some direction. We all want that information and will obtain it, if possible, from some source.

Q. And when you refer to pledge, you mean accounts receivable?

A. I mean by pledge, that are moving, or are general commodities of the company generally, that those assets are to free or make good a 597
particular liability.

Q. Do you know from your connection with this concern, of any circumstance or fact that would have prevented any credit man or any of the general creditors, ascertaining the fact that the merchandise and the accounts receivable of the Schwab-Kepner Company were pledged?

Mr. Wolf: I make an objection to that question because I think it calls for a conclusion and expert testimony as to whether

598 or not a creditor of this firm could have found out the condition of affairs.

Mr. Cohen: That may be argument to be adduced from it, but that is not the question.

(After argument.)

The Master: I don't think that is proper evidence, Mr. Cohen, because, in the first place, it is not evidence of any facts or of this man's opinion as an expert, based on what he found there; it is not in reference to anything the other side has offered, as far as I can see. His conclu-
599 sion that the creditors could have found out is not binding it seems to me, on the other side.

Mr. Cohen: That is not the question, sir. I am obliged to prove a negative, and your Honor knows the difficulty of proving a negative. I am asking the witness if he has any knowledge of any facts that acted as a fence, that prevented what we may subsequently find was the duty of any credit man to have ascertained; and since he is charged that he had knowledge of the fact, I cannot show that he did nothing,
600 except by asking him for those facts, to prove a negative; the most difficult thing in the world to prove.

(After argument.)

(Question read by stenographer.)

Mr. Cohen: The question is withdrawn.

Q. Would the inquiries which you have testified to, as an expert, if made by any credit man concerning the Schwab-Kepner Company, have disclosed the pledges of merchandise and accounts receivable?

Mr. Wolf: I object to that as not being the question the Master suggested. 601

The Master: I will allow the question.

A. Unless a false statement had been made by the Schwab-Kepner Company, the inquiry would certainly have disclosed it.

Q. Do you know of any false statement which the Schwab-Kepner Company made?

Mr. Wolf: That is objected to as calling for a conclusion.

The Master: The objection is overruled.

(After argument.)

Mr. Cohen: I insist on my question. 602

The Master: I have ruled on the question. Proceed.

(Question read by the stenographer.)

A. With the exception that I have seen one or two copies of statements of some time back, I don't know of any statements, false or otherwise, made by the Schwab-Kepner Company. I think it is fair to explain that what I learned in connection with any statements made by them was that it was customary to make a statement in the early part of each calendar year. From that and first having come in connection with them in July, practically there was no need, there was but little chance of my being drawn into that matter at that time. 603

Q. Do you know of any inquiry made by any credit man concerning the pledging of merchandise, or the pledging of accounts by the Schwab-Kepner Company?

A. I do not, but ten thousand such inquiries might have been made without my knowing anything about them.

By the Master:

Q. In the ordinary course of business if a credit

604 man had asked the Schwab-Kepner Company for a statement of its condition, would such a statement have shown the pledging of accounts, in the ordinary course of business, if the request was merely calling for a statement?

A. No, it might not. It might show that the assets consisted of a certain class, and that they footed up so much; that the liabilities may be stated in bulk or might be stated generally in a class and consisted of so much.

Q. And the obligation of Mr. Dockendorff—

A. (interrupting.) Might be placed under the general obligations, possibly, but where the lia-
605 bilities are large it is not only the custom but the direct duty of the credit man to know whether any of these assets are segregated for the purpose of being a specific claim in any form whatever.

Q. For that purpose he usually draws the statement himself?

A. For that purpose most credit men use a printed form on which these questions are expressly asked.

By Mr. Cohen:

Q. What questions do you mean?

A. As to whether any of the assets are pledged

Q. Isn't it a fact that in modern forms, particu-
606 larly in those prepared by the Merchants Protective Association, the direct question is prepared "Do you borrow money on your accounts receivable"?

A. I believe that to be the case.

Q. Do you know whether or not any of the recognized commercial agencies made inquiries concerning the Schwab-Kepner Company?

A. I can only state from hearsay.

Mr. Wolf: Then don't state it.

Q. You don't know. 607

A. I have not seen any recent report of a merchantile agency concerning the Schwab Kepner Company.

Mr. Cohen: May I ask the other side at this time whether they will accept copies of the reports of the commercial agencies, in lieu of the originals, or will they require me to produce representatives of the agencies themselves.

Mr. Wolf: We will take the copies.

Q. Now, coming back then to the approximate estimate of the value of the merchandise, in 608
August, which you say we should accept only as an opinion, you, as I understand from your answers, added to the amount of the pledge what you understood to be the general amount required for the equity?

A. Yes.

Q. And that, you would say, is the credit man's rough method of getting at an opinion of the value of the merchandise without going through the process of an actual stock taking?

A. I can't answer that question in that form.

Q. At all events it was your method?

A. It was my method because— 609

Mr. Cohen: Never mind because.

The Master: It was his method on that occasion.

Witness: Yes, that is all I answer.

Q. And I think you have already testified that you did not verify that opinion by any actual stock taking?

A. I do not know of any actual inventory being made.

Q. Your answer can be yes or no.

A. No. I will say no. Will you read that

610 question? I did not know of any actual stock taking. I answer no.

Q. In answer to a question of counsel for the Receiver and Trustee, at page 23 of the examination of December 23rd, 1910, you stated that among the things that you did or were to do, "in other words, to realize on the liquid assets, or those that apparently were liquid"—?

A. Yes.

Q. What did you mean by that?

A. I referred there almost altogether to the collection of accounts receivable remaining open on the book.

611 Q. Is that what you meant by liquid assets?

A. Yes. There were also one or two accounts which could hardly be termed liquid assets, but they were in the shape of accounts receivable.

Q. They were not liquid assets in the sense of being free from pledge?

A. Oh, no. What I referred to as accounts receivable were undoubtedly pledged. I have testified that all their accounts receivable were pledged as far as my knowledge of the fact and their method of doing business indicated.

Q. Did you inform Mr. Dockendorf or anybody else with reference to the unpledged merchandise?

612 A. Oh, I see—no, nothing whatever.

Q. Did you do anything to convert these unpledged assets into pledged assets to Mr. Dockendorf?

Mr. Wolf: I object to that as calling for a conclusion. I haven't any objection to the witness stating what he did with the unpledged assets or what became of the proceeds. They can follow it up step by step.

(After argument.)

The Master: I think the objection should be sustained. 613

Q. What, if any, changes were made, after you went up to the Schwab-Kepner Company, from the usual method that had theretofore been followed of the dealings between the Schwab-Kepner Company and Dockendorf & Company?

Mr. Wolf: That is objected to as calling for a conclusion, and on its face could not possibly be within the knowledge of the witness, as to what the relations were before he got up there.

Mr. Cohen: I withdraw the question. 614

Q. Do you know of any changes in the method of dealing between the Schwab-Kepner Company and Mr. Dockendorf, that you made, other than those you have already testified to?

Mr. Wolf: I object to that as calling for a conclusion.

The Master: The objection is overruled.

(After argument.)

The Master: I think that is proper.

(After argument.)

The Master: I think this is proper. You can cross examine him on it. 615

Witness: Shall I answer?

Mr. Cohen: Yes, sir.

(Question read by the stenographer.)

A. I think in my previous answers I have covered the ground. I don't want to make any answers requiring long explanations afterwards.

Q. At page 24 of your examination of December 23rd, 1910—

Witness (interrupting): Yes.

Mr. Cohen (continuing): You stated "When I learned some of the things as to

616 the condition of their account, without being in their office, I made up my mind that the quicker it was put into businesslike shape the better." What did you mean by the expression "put into businesslike shape?"

A. I think I have already covered that in previous answers. I may summarize it in a few words. I learned that the accounts on the ledger did not always represent the actual conditions; in other words, they were dilatory sometimes, in getting transactions properly on their books. That is the chief thing that I refer to. There was a gen-
617 eral looseness in getting transactions that had been agreed upon, or took place, in getting them on their books, with the exception of getting their sales.

Q. Do you mean by that, Mr. Williams, that they put any fictitious entries on their books?

A. Not that I am aware of.

Q. I take it from your previous answers, that all you meant by that was that where they received the merchandise back from the customer for any reason, they failed to put the credit on the account of the customer that appeared in the ledger, and failed to give the banker notice of it.

618 A. I will accept that answer, with this qualification: that if anything prevented the sale being carried out in its entirety, as at first contemplated, for whatever the cause might be, there was not that strict attention to promptness in getting them stated that there should have been.

Q. In short, to summarize the transaction in a little more detail, the customer would give an order for goods, the order would be filled and charged to the customer, delivery might not be made at the date when the delivery was due, or the shipment might not be in complete compliance

with the order, but the goods would be shipped, 619
as I think you have testified, taking the chance that they would be accepted, and the account would be transferred; then if the goods came back the Schwab-Kepner Company would either have to make an adjustment with the customer or else cancel the account on the books for those goods—your testimony I understand is that the unbusinesslike method consisted both in failure to ship goods promptly in compliance with orders, and in their failure to post up in the books merchandise returned, and failure to notify Mr. Beckendorf.

A. I want to stick to the answer already given —what you say is contained in my answer, but I 620
want to say that if for any cause whatever a sale failed in completion in accordance with the original expectation, there were times, and that more frequently than should occur, of dilatoriness in putting them in the books of entry. It might be contained in the correspondence, or in personal interviews, but the results arrived at were very often slow in reaching their proper record.

Q. Now do you know of any other occasion of the failure of an account—I mean failure in the sense that the account did not become an obligation on the part of the debtor, for failure to ship goods in time or failure to ship the quantities that 621
were ordered?

Witness: I don't think I have gathered your full question, Mr. Cohen.

Mr. Cohen: In other words, I endeavored in my question to sum up what I understood to be the only cases of failure of the account to become a real account, and failure to put it on the books. I want to know from you what other occasions you know of of such condition of the account?

Witness: Other than delivery?

622 Mr. Cohen: Other than deliveries or lack of deliveries or promptness.

A. Delivery or lack of delivery of merchandise might not perhaps be what the customer said he had bought; he might claim an allowance, or return the whole of it. If you are a manufacturer accustomed to using a certain grade, and an honest man, who has achieved a reputation, one who wants to supply goods equal to those hitherto used, if there were any imperfections they might be returned, or held subject to the orders of the Schwab-Kepner Company.

623 Q. In your experience as a credit man would you say that such situations were unusual, or would you say that failure to post them properly in the books was an unusual feature of the situation?

A. They were certainly not unusual in class; they were somewhat unusual in amount, due to slow deliveries. But the thing that could be criticised was not that they happened, but that they were not recorded promptly.

Q. Then we may understand from your answers that you were put up there for the purpose of seeing that these things were properly posted in the books and that Mr. Dockendorf was properly no-
624 tified, and, so far as you could, to reduce the occasion of such occurrences?

A. That is correct; these were part of my duties.

Q. And that you were aware at that time, of course that, insofar as this returned merchandise, or these failed deliveries were not recorded in the books, or notice not given to Mr. Dockendorf, his security was weakened?

A. I certainly was aware of it—that is, where I was aware of failure to complete the sale.

Q. Yes; and insofar as the accounts were to be

properly kept upon the books and the customer 625
properly satisfied, so that the account was accepted by him, and insofar as notice was given to Mr. Dockendorf of the circumstances, Mr. Dockendorf's security was strengthened.

A. Yes.

Q. Now do you know of any other circumstances in which Mr. Dockendorf's security was strengthened, or through which Mr. Dockendorf's security was strengthened?

Mr. Wolf: That is objected to as calling for a conclusion.

The Master: The objection is sustained.

626

Q. On page 11 of your testimony of December 23, 1910, Mr. Williams, you were asked concerning the checks received from Mr. Dockendorf's office?

A. Yes.

Q. And the checks to which you there referred represented the advances made by Mr. Dockendorf to the Schwab-Kepner Company; is that true?

A. There are two classes of checks referred to in there.

Q. The checks I am referring to in this question were checks that represented advances made 627
by Mr. Dockendorf to the Schwab-Kepner Company.

A. Yes.

Q. Did you, while you were at the Schwab-Kepner Company, become aware of any diversion of those checks from the ordinary course of business of the Schwab-Kepner Company?

Witness: Do you mean any wrongful use of the funds?

Mr. Cohen: Yes.

A. No, I don't know of any wrongful use of

628 the funds. I only recall two credit transactions that I can criticise. They were small transactions and I don't say that they should be criticised.

Q. What items were those?

A. On fixture account, there appeared an item for which I hadn't any voucher—I think it was on expense. I will tell you in a moment—yes, under the head of "Fixtures" there was an item of $300, for which I had no voucher; and under the head of "General Business Expenditures," there is an item of $303.24.

Q. And outside of these two items, you know of
629 no use of checks received from Mr. Dockendorf, except in the ordinary course of the business of the Schwab-Kepner Company?

Mr. Wolf: I object to that; you are asking him about moneys that came from Mr. Dockendorf.

Mr. Cohen: Yes.

Mr. Wolf: Let him tell what the moneys were used for and then the Referee can say whether it was proper or an improper use of them.

(After argument.)

630 The Master: I do not think that the witness is called upon to determine what is proper or improper. You can question him as to whether payments were made in the usual course of the business.

Q. Were payments made, after the deposit of these moneys, in the bank account of the Schwab-Kepner Company, in the usual course of business?

A. They were.

Q. Outside of the two transactions you have mentioned, do you know of any payment that was

made other than in the usual course of business? 631

Mr. Wolf: That is objected to as calling for the opinion of the witness as to what was the usual course of business.

The Master: He is an expert; I think he can testify as an expert.

A. Mr. Kepner's salary account, more money was debited to that account for more than the actual stated amount of salary would justify.

Q. How much would that amount to?

A. Between June and November, I think it was $3,000 in excess of the amount which his salary would have entitled him to draw.

632

Q. Do you know of any other items out of the usual course of business?

A. I think there was an item of $150, if I remember rightly, to W. A. Corbett, but, while this was drawn to Mr. Corbett's order, I was informed by him, at or about the time of the receivership, that it was really money drawn by Mr. Kepner. Outside of these, I don't recall any item other than for the payment of business debts and expenses.

Q. In the regular course of business?

A. In the regular course of business. I am not criticising trifling expenses which may or may not be judicious. 633

Q. And these matters you have testified to, I think you have already testified, are only open to question?

A. Open to question. I am stating facts, and the conclusions should be drawn by those who have the authority.

Q. At page 11 of your examination of December 23, 1910, you answered a question in this way: "I was sure there was no surplus and I believed that the capital was considerably impaired, if

634 not entirely wiped out. I believe there was a deficit."

Q. Did you in the answer, to that question, intend to make a statement of fact, or merely to give an expression of your opinion arrived at in the manner you have testified?

Mr. Wolf: That is objected to as calling for a conclusion.

The Master: The objection is sustained.

Q. At page 41 of the examination of December 23, 1910, you said: "I was sure there was no surplus and I believed the capital was considerably
635 impaired, if not entirely wiped out. I believed that there was a deficit." At other portions of your testimony to-day, you said that you made no actual inventory of the merchandise and arrived at nothing save an approximate estimate of the assets. How do you harmonize those two statements?

Witness: Shall I answer it?

Mr. Cohen: Yes.

A. I don't think there is any lack of harmony in that. I said, in one case, that I believed; I used that word very advisedly, for the reason
636 that I had not absolute proof as to the exact figures, but believed that the exactness of those figures were not material to the result.

Q. And so you were merely giving your opinion, not attempting to state the actual facts?

Mr. Wolf: I object to that.

The Master: The objection is sustained.

Mr. Cohen: Now, may I, in order that the record may show the difference between counsel and the Master, state my grounds?

The Master: Yes.

Mr. Cohen: I ask leave to cross exam-

ine this witness upon the ground that that portion of his testimony elicited by counsel for the Receivers and the Trustee, in support of their affirmative defense, made the witness the witness of the respondents and entitled me to cross examine him. 637

The Master: I think that the examination conducted by counsel for the Receivers was entirely a cross examination; therefore, the motion is denied.

Q. At page 11, of the same testimony, Mr. Williams, you answered the question then asked: "That merely is the amount which I assumed that the merchandise would probably represent. Q. In other words, an inflation? A. Well, I put on the lowest figure." What did you understand was meant by the word "Inflation" which the examiner put to you at that time? 638

A. I would rather not answer that question; I will answer it if I am directed to; otherwise I prefer not to.

The Master: The witness plainly in the answer, did not commit himself to the use of the word "Inflation."

Witness: That is the only reason why I prefer not to answer the question, because of the word "Inflation." 639

(After argument.)

Witness: I don't know whether it is material, but I would like to make a statement here.

The Master: I think the simplest way to determine that is — Do you object to that question?

Mr. Wolf: No.

(Question read by the stenographer.)

Witness: I shall have to make an answer at length to that.

640 The Court: The only question is what you understood Mr. Wolf meant at that time, by the word "inflation."

Mr. Cohen: I only want to know what you understood the examiner meant by the word "inflation."

Mr. Wolf: I thought the question was broader than that. I object to that question.

The Master: The objection is sustained.

Q. On page 49 of the same testimony, the examiner said to you: "Then your deduction made from the assets, as you have testified, of $250,000, approximately, if that is correct, then, according to the trial balance of July 30, 1910, the company was insolvent to the extent of $150,000.

641 A. Speaking in round figures, with the idea that $25,000 is a matter of no consequence, yes."

Q. Had you made any deduction from the assets of $250,000, approximately, except your estimate of the value of the assets made in the method you have testified to?

A. I simply refer to the answers previously given, as my reply.

Mr. Cohen: I ask that the witness be

642 directed to answer the question.

Witness: I arrived at that conclusion—

The Master (interrupting): I think the witness is justified in his answer, Mr. Cohen; he showed very plainly just how he figured that. While you are entitled to examine him on redirect, I do not know what your question means, whether he included anything more than the assets already given in his testimony—do you mean in his cross examination?

Mr. Cohen: I mean in both.

Q. In other words, you have told us, both on your direct examination and on the cross examination, that all that you did as the basis of the opinion which you gave as to the value of the assets, was to make rough computations, and the quesion and answer here, on its face, may indicate to the reader that you made a deduction of $250,000 from some other method. Was that anything more than a hypothetical deduction you made, based upon the opinion which you formed at that time? 643

Mr. Wolf: I object to that as calling for a conclusion, and assuming a great many things not in evidence. 644

The Master: What does the question assume that is not in evidence?

Mr. Wolf: In the first place, the question assumes that this was a rough computation. Whether it is or not, I think is for the Master to determine.

The Master: I think the objection should be sustained.

Mr. Cohen: Mr. Williams testified, as I recollect, that he took the figures on the trial balance sheet, and figured that certain of the items there were not real assets—as, for instance, the obligation of Mr. Kepner. 645

Mr. Wolf: That was not a rough computation.

Witness: Realizable as such, is the expression I wanted to use.

Mr. Cohen: Realizable rather than real?

Q. What did you mean by assuming in your answer a deduction of $250,000?

Mr. Wolf: From the assets as shown from the trial balance.

646 Mr. Cohen: No; I asked the witness what he meant by that.

A. I meant that in my judgment, the assets appearing on the books and bearing in mind that $25,000 does not vary the result, that if we were then to realize, as a going concern, not under the hammer, there would be approximately the difference I have testified to.

Q. But that was the opinion based upon the figures?

A. That was my opinion, based on experience, and on the figures.

647 Q. But that was not verified by any actual stock taken?

A. I have already so testified.

Q. As you have already testified; and you have already testified, too, that Mr. Dockendorf did not agree with that opinion.

Mr. Wolf: Pardon me. If you want to ask what the party said on that occasion, I have no objection to that.

The Master: The objection is sustained.

Q. At page 50, Mr. Williams, of your testimony at the same examination, the question was asked
648 you, "Q. You still insisted upon your position, and Mr. Dockendorf insisted upon his. A. That is the fact." What did you understand and what did you mean by the position which you assumed and the position that Mr. Dockendorf assumed?

A. I presume that it is fair, from all the testimony and from what I have in mind, to translate that word "position" into "expression of opinion."

Q. That is, you had one opinion, and Mr. Dockendorf had another?

A. Yes. I will amend that by saying that I expressed one opinion.

By the Master:

649

Q. And Mr. Dockendorf expressed another?

A. Yes, sir.

By Mr. Cohen:

Q. And your opinion was that Mr. Kepner was an optimist of optimists, and that Mr. Dockendorf was too overconfident in his manner?

Mr. Wolf: One moment; I object to that.

The Master: The objection is sustained.

Q. At page 46 of the same examination, Mr. Williams, referring to your conversation with Mr. Dockendorf, you are reported to have said: "He 650
thought I had taken a too extreme cut in the matter."

A. That is what I said, as I remember it.

Q. What did you mean by the words, "a too extreme cut?"

Mr. Rosenberg: That is objected to. Ask him what Mr. Dockendorf said.

Mr. Wolf: He is asking him what he meant by a certain answer.

Mr. Rosenberg: The objection is withdrawn.

A. That in the scaling down of the assets, to 651
use a current phrase, that I had gone further in my desire to be conservative, than possibly some other persons might.

Q. Now, is it not a fact, Mr. Williams, that you were expressing this opinion to Mr. Dockendorf with a view to advising him not to make further advances to the Schwab-Kepner Company?

Mr. Wolf: I object to that as calling for a conclusion. I withdraw the objection.

(Question read by the stenographer.)

652 Witness: I cannot answer that yes or no; I must qualify it.

Mr. Cohen: Answer it in your own way.

A. In my judgment, Mr. Dockendorf,—I am sorry Mr. Dockendorf has got to hear what I am going to say,—it is my judgment,—I have already said to him that—

Mr. Wolf (interrupting): I insist on my objection. I thought the witness was going to answer the question "yes" or "no." I object to it as calling for conclusion, and the operation of the mind of the witness,
653 and not what was said and done at that time. I think the question is an improper one, and does not fairly call for testimony.

The Court: Objection is made. I think I will have to sustain the objection.

Q. Mr. Williams, did you have any discussions with Mr. Dockendorf as to the wisdom of his protection from the point of view of his protection from his making further advances to the Schwab-Kepner Company?

Mr. Rosenberg: I object, on the ground that no time is fixed.

654 The Court: Do you want the date fixed; is that the idea?

Mr. Rosenberg: No; the question should be, "What was the conversation?"

(After argument, question read by the stenographer.)

The Master: The objection is overruled.

Mr. Wolf: I think that question, in that form, calls for a conclusion. He ought to ask, not whether he had a discussion on the subject, but what was said on the subject.

The Master: He can only answer the question "yes" or "no." 655

A. I am afraid I cannot subscribe to that word "discussion."

Q. Did you have any conversation?

A. Yes.

Q. What was said?

A. I can only tell you in substance.

Mr. Wolf: Fix the time.

Mr. Rosenberg: Fix the time.

Q. Were there more than one of such conversations?

A. Fragmentarily, yes. 656

Q. Can you fix the date or time of such conversations?

A. No; I cannot. There was a principal conversation that took place in the first few days of August; after that, they were fragmentary, and I can only give a summary of them. I cannot state the date or particular thing that was said at a particular date.

Q. Give the substance of the principal conversation, in August, if you can separate that from the so-called fragmentary conversations later.

A. I think I have already testified—

Q. (interrupting.) Well, tell us when, Mr. Williams—pardon me for being so abrupt, but we are entitled to have you answer the questions. 657

Witness: I am going to put it in a few words, boil it down.

Mr. Cohen: No; I want the substance of the entire conversation; I don't want any boiling down; I don't want any inferences, but I want the substance.

Witness: I am not going to give it; I will not pretend to recall an entire conversation.

658 Now, Mr. Cohen, please do not adopt that tone of voice, because my attitude has been friendly to every one here.

Mr. Cohen: I know, Mr. Williams, but—

Witness (interrupting): I do not want either one side or the other to adopt a tone here, where I am to be brow-beaten.

Mr. Cohen: But you are making us read the record back, and I insist on the whole conversation.

The Master: Answer the question. Mr. Williams has been a very fair and frank witness, I think.

659 Witness: I do not see any reason why a man's attitude should put me in an antagonistic mood.

Mr. Cohen: I do not care whether your mood is antagonistic or not, but I am entitled to an answer to my question.

Witness: I will answer the question when the Referee directs me to.

The Master: Give us, Mr. Williams, as nearly as you can, the substance of this earliest conversation.

Witness: I will have to ask you to wait a moment, until I get quieted. I want to get
660 over any feeling I might have which might influence me in my words. Might I be permitted to be excused for a few minutes?

The Master: We will take a recess now, until two o'clock.

After Recess.

CYRUS WILLIAMS, the witness, resumes the stand:

(The last question before the recess was read by the stenographer as follows: "The Master: Give

us, Mr. Williams, as nearly as you can, the sub- 661
stance of this earliest conversation.")

Q. Before you answer the last question, Mr. Williams, I want to call your attention to the fact that the details of the conversation are regarded by both sides here, as of consequence, and that, while we have no right to expect you at this late day, to remember everything that was said, we are entitled to get your very best recollection, even by stirring your memory up on all the details of that conversation, even if you have already covered it in your previous testimony in general. Now, will you be good enough, please, in answering the ques-
tion, to refresh your recollection as to the sub- 662
stance of the first conversation, with as much detail as you possibly can?

Witness: Do you refer to the conversation in the early part of August?

Mr. Cohen: Yes, sir.

Witness: I swear, I don't know how to answer that question in regard to details.

Mr. Cohen: If counsel on the other side do not object, let me put a question to you that might otherwise be leading.

Q. There was a difference of opinion between you
and Mr. Dockendorf, as to the wisdom of Mr. Dock- 663
endorf's continuing to lend the money to this concern, was there not, Mr. Williams?

A. There was.

The Master: At that time?

Mr. Cohen: At that time.

Q. I mean at that time, in the early part of August.

A. Yes; I think I may answer that question yes. I cannot tell in what way it was expressed, but that is the impression on my mind.

664 Q. And that difference of opinion continued?

A. As far as I am aware.

Q. Now, you had conversations with Mr. Dockendorf in which you gave your reasons for your opinion, and in which, we may assume, he gave his reasons for his opinion. Now, I want to know whether, in that conversation, you said any of the things that one might reasonably suppose a man would say to his principal who was trying to caution him against going any further into a concern that was getting into difficulties.

Mr. Wolf: I object.

665 The Master: Assuming that to be a statement, is there any objection to the question? I understand that that is a preliminary statement of Mr. Cohen's in reference to the question he is going to ask.

Mr. Cohen: In view of the fact that the witness has said that he cannot answer the question, I was trying to assist him.

(After argument, question read by the stenographer.)

The Master: Is that the question?

Mr. Cohen: No; it is merely a preliminary statement.

666 Q. Now, directing your attention to that first conversation, in August, I want you to tell us any of the details of the conversation that you can recall, relating to the discussion and the policy that was then under consideration.

A. I will answer you as far as my memory serves me: I won't vouch for the exact correctness of it, for the reason that I cannot separate, to my own satisfaction, what was said there from what might have been said at some later time.

Q. Are these conversations so tied up together in your memory that you cannot separate them?

A. I think I may say that I cannot separate them 667
to my own satisfaction; I cannot separate them so that I can answer absolutely as to what happened on that date or as to what happened on any other specific occasion. Part of it may have taken place at another time.

Q. Then I will ask you to give us the substance of all these conversations.

A. Well, beginning with August, I had the trial balance sheet with me, and without going into every little detail, which to me seems non-essential, I simply stated what in my judgment or my opinion giving my reasons, why there should be a shrinkage in the assets as compared with the book value of the 668
assets.

Q. Go ahead.

A. I think that about the opening of this, Mr. Dockendorf telephoned for Mr. Kepner. I think, I say: I won't swear to that.

Q. Oh, by the way, Mr. Williams, at these conversations that you testified to on your direct examination was anyone else present?

A. I think Mr. Kepner was present at some part of the conversation in the early part of August.

Q. Was he present at any of the other conversations?

669

The Master: Any of the later ones?

Mr. Cohen: The later ones.

A. I can't say yes or no; I don't remember.

Q. Your recollection is not clear as to that?

A. I can only say that my impression is that he was there, but I won't swear that he was there.

Q. Well, now, give us the substance of the conversations, Mr. Williams.

A. I had the floor at that time, and I made a statement, and I made it substantially as I have detailed it here. If you wish me to go through

670 with it, I will have to have the trial balance. When I say I had the floor, I mean I had the floor and made a statement at that conference early in August.

Q. Proceed.

A. My recollection is that I took up first the item of the indebtedness of J. B. Kepner, stating at the time that I did not know I was carrying coals to Newcastle, by that meaning that I did not know whether I was to bring information which Mr. Dockendorf had, or whether he had not. The current account of J. B. Kepner showed a debit balance of $22,497.56. I explained that the notes
671 receivable, which were in bulk, representing nearly $19,000, contained two notes of Mr. Kepner's, amounting to more than $10,000. These were facts, apparent on the face. As to the accounts receivable, I could only state my conclusion. That conclusion was not based on an exact schedule; it was based, however, on an examination of the accounts as far as I have been able to make up to that date, and bearing in mind that it was in my judgment a matter of no consequence whether I was within twenty-five thousand—

Mr. Cohen (interrupting): Pardon me,
672 but I want to get at the conversation.

Witness: That is just what I am reciting.

Q. Is that what you said to Mr. Dockendorf?

A. In substance.

Q. In Mr. Kepner's presence?

A. I won't swear that he was there at the time, but I think he was.

Q. All right; proceed.

Witness: I would like to have the answer as far as I have gone.

The stenographer reads the answer as far as the witness has gone as follows: "My

recollection is that I took up first the item of 673
the indebtedness of J. B. Kepner, stating
at the time that I did not know I was carry-
ing coals to Newcastle, by that meaning
that I did not know I was to bring informa-
tion which Mr. Dockendorf had, or whether
he had not. The current account of J. B.
Kepner showed a debit balance of $22,197.56.
I explained that the notes receivable, which
were in bulk, represented nearly $19,000,
containing two notes of Mr. Kepner's
amounting to more than $10,000. These
were facts, apparent on the face. As to the
accounts receivable, I could only state my 674
conclusion. That conclusion was not based
on an exact schedule; it was based, however,
on an examination of the accounts as far as
I had been able to make up to that date, and
bearing in mind that it was in my judgment,
a matter of no consequence whether I was
within twenty-five thousand."

A. (continuing):—dollars of the correct amount or not, I stated it as my belief that the accounts might safely be reduced from the ledger figures by practically $75,000—it might even be one hundred thousand dollars—I am not presuming that I am stating the conversation word for word; I am stating it to the best of my recollection, as I have been asked. I then explained what the item of merchandise, $378,439.54, meant. I stated what elements were contained in that account, it being what is commonly known by accountants, as an omnibus account, and I stated that in my best judgment, it was not impossible that $286,000 represented substantially what an inventory of the merchandise might show if one were provided. I explained how I came by that; furthermore, that I had taken the amount of the loan, added thereto the margin, made

676 some allowance for the merchandise not pledged, and again stating that it was not, in my judgment, of material consequence whether we arrived very close to the figure or approximately at it, I named the sum I have stated, $286,000, as being what I believed an inventory would approximate if one were made. I do not think I made any reference to the liabilities in detail, for the reason that my experience—

Mr. Cohen: Well, never mind your reasons at that time.

The Master: Unless you stated them at that time.

677 Witness: My recollection is that I did. I will leave that answer standing. I summed it up by showing that there was certainly no surplus, that it did not appear to me there was any capital, but, on the contrary, that there was a deficit. If I was right in my premises, that deficit would amount, in round figures, taking the lowest figures I had in mind—that is, $25,000 one way or the other—taking the lowest figures I had in mind, the deficit might amount to $150,000. I don't think there was any discussion on the subject.

678 Q. Well, was it the amount stated at the conversation, Mr. Williams?

A. No, sir. I mean by discussion that I don't think there was any giving of views; I made my statement and thought I had discharged my duty. It was the province of the principal to state for himself how much importance to attach to it, and what he decided to do.

Q. Did the principal say anything to you at that time?

A. He did not agree with me

Q. What did he say?

679

A. I don't recall, Mr. Cohen.

Q. You recalled the details of what you said to him; now can't you recall what he said to you?

A. Simply that he stated that he felt that I had taken an extreme view of the matter.

Q. Is that all?

A. That's about all. The subject of the conversation was the question as to the condition of the Schwab-Kepner Company as it might affect Mr. Dockendorf.

Q. In what respect?

A. As to his continuance or as to his position, though I did not know what his position was; I don't know now.

680

Q. Did you give Mr. Dockendorf any counsel or advice as to what you thought he ought to do in reference to continuing to advance money on accounts receivable?

A. I don't think that at that time I made any—offered any advice, tendered any counsel.

Q. I understood you to be giving the substance of all these conversations. Did you at any time in these conversations give Mr. Dockendorf any counsel or advise as to what you thought he ought to do with reference to continuing to advance money on accounts receivable?

681

A. I thought I was pinned down to my best recollection of my first conversation, in August.

By the Master:

Q. That is what you have been telling us.

A. Yes, sir; that is what I have been detailing

By Mr. Cohen:

Q. At subsequent conversations did you give Mr. Dockendorf any advice or suggestions as to his continuing to advance money on bills receivable to the

682 Schwab-Kepner Company, and, if so, what did you say and what did he say?

A. I don't know how to express an answer in regard to giving advice. If you mean by that that I at any time said to Mr. Dockendorf, "I advise you to do," this or that, I don't recall that I ever used those words.

Q. Well, in substance?

A. That he took a very much more liberal view than I did, and that I thought a continuance—this is not the conversation in August; it is some conversation at some later date, and it is fragmentary; I am giving you my recollection of what might have
683 happened once, twice or three times, or somewhere about there.

Mr. Cohen: So we understand. We want a summary of the whole of them.

Witness: And that I thought it was not impossible that he might be jeopardizing himself in continuing, as I had had an experience in a somewhat similar line of business before.

Q. In what respect did you say he was jeopardizing his interests?

A. All right, sir. When the accounts and the
684 schedules were sent down to Mr. Dockendorff's office, at the same time an order was sent to the bleacheries for the shipment of merchandise. We might say that until the shipment of that merchandise the account had not really ripened into an account receivable. Do I clearly express myself?

Mr. Cohen: Yes. Go ahead.

Witness: And in the event of shipments failing to be made by the bleacheries, or by the mills to the bleacheries, why, I

thought his position would—might become, not would become, a more hazardous one than at the time we are speaking of. 685

Q. In short, if he continued to advance money upon accounts receivable, on the assumption that the accounts receivable were valid security, you were of the opinion that he might some day wake up and find he did not have the security he thought he had?

A. I can see so many complications that might come into it, all of which might render some part of his security doubtful.

Q. And you felt at that time, did you not, that it was your duty to call his attention to all the elements which you, as a credit man, believed might render his security unsafe in the future? 686

A. I felt it was my duty to draw his attention to—you say all the elements. I don't know that I entered into detail, only that I could see that it might make a substantial difference.

Q. Now, did you have in mind at any of those conversations any idea that Mr. Dockendorff was securing his security to the detriment of unsecured creditors.

Mr. Wolf: I object.

The Master: I do not see how that is competent. The objection is sustained. 687

Q. Now, was there any conversation at any time between you and Mr. Dockendorff in which you were asked to do anything, as representing Mr. Dockendorff, except to carry out the business-like method in the handling of these accounts receivable, that you have testified to this morning?

Mr. Wolf: That is objected to as calling for a conclusion.

The Master: The objection is overruled.

688 (Question read by the stenographer.)

(After argument.)

The Master: He has testified that he was to see—that Mr. Dockendorf had told him that he was satisfied that the accounts were not being kept in a satisfactory manner, and he was put there to see that it was properly done. I think the question is proper.

(After argument.)

The Master: I think the question is proper.

Mr. Cohen: You may answer the question, Mr. Williams; it has been allowed.

689 (After argument.)

The Master: The question is whether he received any instructions from Mr. Dockendorf at any time, other than to see that the accounts receivable were handled in a business like manner. If he received any other instructions he should state them in answer to that question.

(After argument.)

The Master: Answer the question if you can, Mr. Williams.

690 A. I don't recollect that Mr. Dockendorf, and I don't believe he did at any time make any suggestion to me that I should endeavor to do something which would be something other than that which he was entitled to under his contract with the Schwab-Kepner Company, as I understood the contract.

Q. Yes; and in answering that question you are assuming, are you not, that Mr. Dockendorf was entitled, as security for his advances to the accounts receivable that were assigned to him and to the merchandise covered by those accounts in case for any reason the customer refused to, or did not receive the merchandise.

Mr. Wolf: I object to that as calling for 691
the mental operation of the witness's mind as to whether those are Mr. Dockendorf's rights or not.

(After argument.)

The Master: The witness said that he did not remember any instructions to do anything to give Mr. Dockendorf any advantage other than what he had under the agreement, as he, the witness understood the agreement. Mr. Cohen is entitled to have him testify as to what he understood to be the agreement. Nobody is bound by his understanding of it, but it elucidates his previous 692
answer.

Witness: Shall I answer the question?

Mr. Cohen: Yes.

A. My understanding of Mr. Dockendorf's rights was that he was to have the security of the accounts receivable, or, in the event of the failure of the accounts receivable, of the merchandise represented therein. I also understood that he had a lien on the equities in the goods at the bleacheries, subject to previous liens of the banks and the liens of the bleacheries for work they had done, or for any account which they might have.

Q. And by failure of the account, as you express 693
it, you don't mean failure of the debtor?

A. No; I mean the failure of the transaction to become really an account receivable.

Q. Then your instructions from Mr. Dockendorf were to see to it that such business like methods were devised or carried on by the Schwab-Kepner Company that the security which you understood he was entitled to under his contract would come to him?

Mr. Wolf: I object to that as calling for a conclusion and as entirely too leading.

694 (After argument.)

The Master: I think that is a fair summing up of his testimony. Do you object to it?

Mr. Wolf: I do, yes, sir.

The Master: The objection is overruled.

Witness: I will have to qualify that answer. I cannot answer yes or no.

Mr. Cohen: You may do so.

Mr. Wolf: If he cannot answer yes or no, I suggest that Mr. Cohen ask him what was said to him.

695 Mr. Cohen: I think I am entitled to the witness's answer, without any qualification he wants to make.

Witness: I don't think, if I may be permitted to answer it, that any of you will object to the answer, but I can't say that beforehand.

(After argument.)

Mr. Cohen: I will not press for an answer to that question. The question is withdrawn.

Q. Can you tell us anything that Mr. Kepner said at any of these conversations between Mr. Dockendorf and yourself at which he was present?

696 A. Well, referring to the conversation of early August, that is an expression of opinion, in what words I can't recall, that I had taken a very pessimistic view of the situation, and that he was sure that he could work out. I don't recall any extended conversation—there may have been a good deal, but, to use a phrase which somebody will recognize, it was running around in a ring; I mean the same thing reiterated in different forms at the same time.

Q. That is, he reiterated the belief that he would

work out his situation if Mr. Dockendorf would 697
continue to advance money?

A. That's it.

Q. And Mr. Dockendorff agreed?

Mr. Wolf: I object to that. Ask him what Mr. Dockendorf said on that subject.

Q. I will ask this question. When Mr. Kepner said, at any of these conversations, that he could work out his situation in spite of your pessimistic belief, what did Mr. Dockendorf say?

A. I cannot repeat the very words, I simply know there was no doubt in my mind at all that Mr. Dockendorf—

698

Mr. Wolf (interrupting): No; tell us what Mr. Dockendorf said.

Witness: I can't.

Mr. Cohen: I object to your interrupting the witness. Finish your answer, Mr. Williams.

Witness: Well, from what Mr. Dockendorf said it was very apparent to my mind that he leaned very decidedly toward Mr. Kepner's view.

Mr. Wolf: I move that the answer be stricken from the record.

Mr. Cohen: Before your Honor rules on 699
that motion, I would like to ask another question.

The Master: What is the question?

Q. Are you now attempting to give the substance of what Mr. Dockendorf said at these interviews?

A. I am, the substance of what his words is, as impressed on my mind.

Mr. Cohen: I submit that the answer is admissible.

The Master: I will strike the answer out.

700 Q. Now what was the substance of what Mr. Dockendorf said?

A. I cannot give you any better answer than I already have.

Mr. Cohen: I will ask your Honor to instruct the witness as to the difference between explaining the operation of his own mind and his recollection of the substance of the conversation.

The Master: Well, Mr. Williams, if you remember the impression that was made on your mind by what Mr. Dockendorf said,
701 why can't you give us the substance of what he said?

Witness: I frankly cannot, Mr. Referee, with every desire to answer without qualification.

By the Master:

Q. Was the impression that was made on your mind made by what he said?

A. By what he said and by his acts, showing every desire to lean toward Mr. Kepner's view and help him out.

The Master: I do not know, Mr. Cohen,
702 that I can explain to him any more simpler than that what the substance of Mr. Dockendorf's statement was.

By Mr. Cohen:

Q. Well, can you recall anything else that Mr. Kepner said at any of these interviews.

A. Always his reiteration that if Mr. Dockendorf would afford him the assistance which he might seek under his contract and would not enforce too sharply the question of the delivery of the bills of lading at once—I am giving you the language, bills of lading, bills of lading or shipping

receipts—he was certain that he could work the 703
question out, that he could pay all his debts.

By the Master:

Q. Was that said to Mr. Dockendorf?

Witness: Sir?

The Master: I ask you was that said to Mr. Dockendorf?

A. Unquestionably.

Q. On several occasions.

A. More than once.

Q. Mr. Dockendorf must have said something in reply, didn't he?

A. He certainly did, Mr. Referee; just his words 704
I could not tell.

Q. Can't you tell us the substance of it?

A. One thing does stand out clearly in my mind, but Mr. Kepner was not present.

Q. The question is what he said to Mr. Kepner or when Mr. Kepner was present.

A. I cannot, Mr. Referee; I would be simply taking it out of the air to satisfy others. I would like to, but my memory fails me.

Q. It seems strange to me that when you made this report to Mr. Dockendorf and referred to it on several occasions, and when Mr. Kepner had ex- 705
pressed his desire that Mr. Dockendorf should keep on with this arrangement, that you cannot give us any idea of what Mr. Dockendorf said on any of those occasions.

A. I know he said more than once that he would afford him every assistance he could—I am well aware of that, but as to reciting any conversations, if I did I would be simply coining it and I do not wish to do that. I am perfectly frank and satisfied to stand by the fact that Mr. Dockendorf said to Mr. Kepner more than once that he would stand by

706 him, and would assist him in every way he could without hazarding himself too much, and his actions showed that he did.

The Master (interrupting): Strike out "and his actions showed that he did."

Witness: I cannot recite any words, and there is no use claiming that I can; I cannot do it.

By Mr. Cohen:

Q. Let us see if we can get the situation clearly before the Master, so we can understand it. You understood that Mr. Dockendorf was under con-
707 tract to the Schwab-Kepner Company?

A. I did.

Q. You understood that Mr. Dockendorf was lending money to the Schwab-Kepner Company?

A. I did.

Q. And you understood that he was getting accounts receivable as security?

A. I did.

Q. And you understood that if Mr. Dockendorf stopped loaning money to the Schwab-Kepner Company something would happen?

Mr. Wolf: I object to that. I withdraw
708 the objection.

A. I don't know that—you used the word "understanding." I did not know something would happen; I, however, believed that something would happen.

Q. That what would happen?

A. That they would be obliged to meet their creditors in some proper form.

Q. What do you mean by "Meet their creditors?"

A. That was the conversation you referred to. Meet their liabilities as they fell due, unless they could make arrangements some where similar to those they had with Mr. Dockendorf.

Q. Now, that situation was made clear in the con- 709
versations between Mr. Dockendorf, Mr. Kepner and yourself?

A. Certainly.

Q. And if it was not referred to in actual words, it formed a part of the conversations?

A. It did, without a doubt.

Q. Now, Mr. Williams, with that in mind in the conversations, if Mr. Dockendorf stopped advancing money, Mr. Kepner understood that he would either have to make arrangement with other bankers or, as you say, meet his creditors?

A. Mr. Kepner unquestionably understood that if Mr. Dockendorf stopped, and if he, Kepner, was 710
unable to make similar arrangements elsewhere, he could not meet his obligations as they matured.

Q. Now, what did Mr. Kepner say? Give us, as nearly as you can, the substance of the conversation, as to the basis of his belief that if Mr. Dockendorf continued to make advances he would be able to meet all of his obligations.

A. The great thing, the principal reason which he held out was that he stated — as he stated it, the principal reason he held out was that the Schwab-Kepner Company had favorable contracts with mills for the delivery of merchandise, that in his judgment the market would become more firm, if 711
it did not actually advance, and that they would reap substantial profits from them.

Q. Now, separating that answer into its various elements, in the first place, he believed that he had favorable contracts for the purchase of goods?

A. Yes.

Q. He believed he had favorable contracts for the sale of goods?

A. I didn't say he said that. I said his belief was that the market would become firmer, if it did not advance.

712 Q. Market conditions at that time were—?

A. Sluggish.

Q. Mr. Kepner's belief was that market conditions would improve?

A. Yes.

Q. That is, that they would become firmer?

A. Or perhaps advance.

Q. And he expressed the belief to Mr. Dockendorf that if Mr. Dockendorf would continue the contract by advancing money on the usual security, he, Kepner could work out the affairs of the Schwab-Kepner Company so as to meet all his obligations.

713 A. That is correct.

Q. And that if Mr. Dockendorf did not continue to make those advances, then what did Mr. Kepner say was likely to happen?

A. I don't know that Mr. Kepner ever enlarged on the alternative. Is that sufficient?

Mr. Cohen: No; go ahead.

Witness: The only time that I recall Mr. Kepner making any full statement regarding what might happen if Mr. Dockendorf stopped was immediately before the receivership; the day previous, I think it
714 was.

Q. What did he say then?

A. Simply said something to the effect that he would have to give up; didn't say it in those words and didn't take much longer to say it, but that was it.

Q. Well, now—

Witness (interrupting): But, as I have said, Mr. Kepner was not of the habit of mind to dwell very much on the dark side of things.

Q. On the day before the receivership did Mr. Kepner still say that he could work the thing out if Mr. Dockendorf would continue to lend him money under the contract? 715

A. I am not sure. I think not. I think by that time he realized the seriousness of it. But still he may have said so. I cannot tell.

Q. At all events, your best recollection is, so far as the conversation disclosed, Mr. Kepner remained in the same general frame of mind down to within a few days of the bankruptcy?

A. Within— I don't know within how many days of the bankruptcy, but very close to the last.

Q. Then the conversation, you think, by Mr. Dockendorf was to the same effect as to Mr. Dockendorf's frame of mind? 716

Mr. Wolf: Let him tell that in a little more detail.

Mr. Cohen: He has told it in detail. Did Mr. Dockendorf say anything different than what you have already testified as the summary of these fragmentary conversations?

A. Well, there was one conversation that made such an impression on my mind that I made a three or four line note of it. It happened within a week of the time that Mr. Dockendorf was going to Europe. I was in Mr. Dockendorf's office, and at his request and after some comparatively unimportant things had been talked about, he turned to me, and the conversation ran something like this: Mr. Dockendorf said "I don't understand, Williams, one thing." He said, "When I talk with you, you tell me that the business is in a most precarious condition and that things may happen any day; when I talk with Mr. Kepner, he tells me things are improving right along and that he will work out without question of doubt. How do you reconcile those two statements?" I said, "I don't 717

718 reconcile them." He said, "What do you think of it?" I said, "Well, it is a matter of judgment and a matter of temperament." I said, "You have the opinion of two men and you can pin your faith to either of them." I don't quote those last words as my identical words, but that, in substance, is what I said.

Q. Have you stated all of that interview?

A. I might state it over again, perhaps.

Q. I did not state to you to state it over again. I asked you if you had stated all of it.

A. All that I recall.

Q. When did that interview take place?

719 A. The Monday prior to Mr. Dockendorf's sailing for Europe.

Q. And when was that?

A. I don't know; the latter part of October, I think.

Q. Mr. Dockendorf sailed on the 29th of October, did he not?

A. I don't know, sir; I don't recall.

Q. Assuming that was the date.

A. If that was the date, it was the Monday prior to that. That is my recollection of it. I haven't the date end of it.

By the Master:

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Q. Why did you make a note of that?

A. Because it made such a strong impression on my mind that I felt assured then that it could be only a short time before the matter would be fully decided as to whether I was right in my judgment or not. I do not know why I made a note of it other than the fact that it made a strong impression; I did not know but what the matter might come up.

By Mr. Cohen:

Q. It is your custom to place considerable re-

liance on your own judgment in credit matters, is 721
it not?

A. I certainly do.

Q. And you take a great deal of pride in your own judgment in credit matters, do you not?

Mr. Wolf: I object to that.

Q. Then, answer this question: Is it the fact that you made that note because of your pride in your own opinion, because you believed that events would show that your opinion was more sound than Mr. Dockendorf's?

Mr. Wolf: I object to that as an unfair question. 722

The Master: The objection is overruled.

A. Mr. Cohen, I have made too many mistakes in my life to feel that I am infallible. I realize that we all make mistakes enough, despite our best judgment. I made that note as much from intuition as anything else. It was a sharply defined issue, which is summed up in a few words, and, as far as I can recall, had never been put in notes by either Mr. Dockendorf, Mr. Kepner or myself.

Q. What was the issue, an issue of fact or judgment, between you two?

A. I have stated how the conclusion was reached. 723
It was a matter of judgment and a matter of temperament.

Q. Was there any other reason? Did you make any other notes of any other conversation that you had with Mr. Dockendorf regarding the question of his continuing to advance money to the Schwab-Kepner Company?

Witness: Do you mean did I make any note for my own information?

Mr. Cohen: Any other private memorandum, yes, sir.

724 Witness: Do you mean, by "private memorandum," something I wrote and retained?

Mr. Cohen: Yes.

A. No.

By the Master:

Q. Are you making a distinction between your own personal memorandum and written reports?

A. I am distinguishing between something I have written and possibly retained and something I have written and possibly sent to Mr. Dockendorf.

725 By Mr. Cohen:

Q. Now with your recollection refreshed so that you can tell what took place at that interview of which you made these brief notes, can you now tell us in any more detail what Mr. Dockendorf said to you at these various interviews in which this so-called issue, as you have described it, was confirmed?

A. Mr. Dockendorf's statement that I was too pessimistic, took a too extreme view of the facts; his statement that he was going to back the Schwab-Kepner Company as far as in his judgment he could go—I mean with due regard to prudence, without
726 being too hazardous. I can't say anything further than that.

Q. Now, you knew the percentage of advances that Mr. Dockendorf was to make on collateral, did you not?

A. Eighty per cent. of ninety-six per cent. of the face value.

Q. Did you become aware of the fact that after August Mr. Dockendorf did in fact lend more than eighty per cent. to the Schwab-Kepner Company?

A. I think there per cent times he did, yes.

Q. Did you criticize that?

A. I really don't know, Mr. Cohen. A man is 727
not likely to continue criticising when he finds that his principal takes an entirely different view.

By the Master:

Q. You don't recollect that you did, I understand?

A. No, I do not.

By Mr. Cohen:

Q. Was there any conversation between you and Mr. Dockendorf and Mr. Kepner, at which the matter of advancing more than eighty per cent. was discussed?

A. Not in that way. Mr. Kepner at times asked 728
for a larger amount than the collateral showed he was justified in expecting at that time, and with the promise that he would make good—that is, would put up additional collateral to cover the larger sum within a day or two days, whatever it might be.

Q. In other words, he would send down collateral and ask for, say, eighty-five or ninety-five per cent. advance and promise, within a few days to send down additional collateral?

A. He never asked for it by percentages, but by stating the amount of his requirements to meet his 729
obligations at that particular time.

Q. At what percentage was it?

The Witness: Do you mean taking the transaction of that day?

Mr. Cohen: Yes.

A. Oh, I never thought of it from that point, Mr. Cohen, and I could not, would not undertake to answer that.

Q. Well, the practical result was, on that particular day, that Mr. Dockendorf would have ad-

730 vanced to Mr. Kepner's company more than the eighty per cent. on the collateral submitted?

A. That is correct.

Q. With the understanding that the additional collateral would be sent down in the course of a day or so by the Schwab-Kepner Company.

A. That is correct.

Q. Now, is that advance over the eighty per cent. what has been referred to, either by Mr. Dockendorf or yourself, I think, as an overdraft?

A. Yes, we have used that term.

Q. And by overdraft you mean the amount that the Schwab-Kepner Company would get beyond the
731 eighty per cent. to which they were entitled under the arrangement with Mr. Dockendorf?

A. If you mean treating the account as a whole, that is correct.

Q. That is to say, both parties understood, treating the matter as a whole, that the Schwab-Kepner Company was never entitled to more than eighty per cent. on the collateral?

A. Eighty per cent. of the net value of the collateral.

Q. Of the net value of the collateral?

A. Yes, sir.

Q. But from time to time, in order to meet the
732 obligations of the Schwab-Kepner Company, Mr. Kepner would ask for more than eighty per cent.

A. That's the idea.

Q. And under that, what you think, mistaken idea, Mr. Dockendorf would give it to him?

A. My answer is that Mr. Dockendorf advanced the money.

Q. He would advance the money?

A. Yes.

Q. In addition to the eighty per cent.?

A. Correct.

Q. And would receive the collateral of accounts 733
receivable?

A. As they were created?

Q. As they were created?

A. Yes. You better withdraw that word created, in the sense of being fictitious.

Q. You don't mean that?

A. No, I don't mean that; I mean as they were given birth to, in the ordinary course of business.

Q. Well, now, Mr. Williams, as an expert, is it not the fact that in these dealings between bankers and merchants, the merchant very frequently tries to borrow more on the equity than he is entitled to under his contract, to meet his general obligations, 734
and that the banker has to fight against it?

Mr. Wolf: That is objected to as improper evidence and not affecting the issues in this case at all.

(After argument.)

Question read by the stenographer.

Mr. Wolf: I object to that because it is not a proper subject of expert testimony, and is entirely immaterial and disconnected from any issue raised by any of the pleadings in this case.

The Master: It seems to me that that may 735
relate to the question as to whether these transactions were unusual. For that reason I will overrule the objection.

Mr. Cohen: May I reframe the question?

The Master: The question is withdrawn.

Q. In your experience, Mr. Williams, can you say that it frequently happens in these dealings between bankers and merchants under contracts of this sort that, in order to meet maturing obligations, the merchant will apply to the banker to

736 lend him more than the percentage provided for in the agreement?

Mr. Wolf: Same objection.

The Master: The objection is overruled.

Witness: Shall I answer the question?

The Master: Yes.

A. When I was in that business it was a very frequent occurrence.

The Master: We will take an adjournment now until Friday, January 27th, next, at half past ten, thereafter to proceed on Wednesday and Friday of each week at half
737 past ten, until finished.

Mr. Wolf: I have no objection to going on every Friday, and I have no objection to going on on Wednesday following this coming Friday, but to go on every Wednesday thereafter is almost impossible, and I don't want the Referee or counsel to assume that I can do so, for the reason that I have the case of Ernest *v.* The Irving National Bank, which has been proceeding every Wednesday, and it is the understanding in that case that it shall go on every Wednesday, and it would
738 be a tremendous hardship, if not impossible to try that case on any other day, for the reason that the time of Judge Brown, the Referee, is so taken up that it is almost impossible for him to take any other day than the one day we have agreed upon. I am willing to take the case next Friday, and I am willing to select Friday and any other day—even to select Friday and Saturady, if you choose, but I don't want to go on the Wednesday following this coming Friday.

Mr. Cohen: I would like to state on the record, in view of that statement by coun-

sel, that the Referee announced, at the last 739
hearing, that he had only three days in the week he could give, namely, Mondays, Wednesdays, and Fridays—and his time is just as busily engaged as the time of other Referees and counsel. I think we all agreed that Monday was not an available day because of its being calendar day, reserved for motions; and I desire to state also that for the next two or three weeks, because of the agreement made the last time we met that we should proceed on Wednesdays and Fridays, I have refused to take any case before Referees in Bankruptcy on Wednesdays and 740
Fridays, at great inconvenience to counsel.

The Master: I do not think there is anything further I need to say.

741

742 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter
of
SCHWAB-KLEPNER COMPANY,
Alleged Bankrupt.
} In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorf, be-
743 fore Edwin G. Adams, Referee in Bankruptcy, as Special Master, at No. 165 Broadway, New York City, on Friday, January 27th, 1911, at 10:30 A. M.

PRESENT:

JULIUS HENRY COHEN and G. B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF, Attorney for Receivers.
JAMES ROSENBERG, Attorney for Creditors.

Mr. Cohen: Mr. Referee, at the last hearing I informed you that we had arranged
744 to permit Messrs. Suffern & Sons, the accountants to examine the books of Mr. Dockendorf for the purpose of verifying the schedules and exhibits which we had turned over to them which we stated were transcript of our books. A Mr. Harding came to Mr. Dockendorff's office with a letter from Mr. Wolf stating that Mr. Harding had been with Suffern & Sons and would make the examination but that he was no longer with Suffern & Sons. That presented a new situation concerning which Mr. Dockendorf consulted me and the day

before yesterday I went over to Mr. Dock- 745
endorff's office and for the first time made
a careful examination into his methods of
keeping books. I recognize, of course, the
right of the other side to select their own
accountants but it seemed to me that if we
could produce before you here, in response
to your direction, all of our records from
our office material to the case that they
could have any accountant they chose ex-
amine those records, and so I have advised
Mr. Dockendorff to bring here to-day all of
the records in his office containing the
transactions between the Schwab-Kepner 746
Company and himself; the records are here
and will be produced. I informed Mr. Wolf
of that yesterday afternoon and we en-
tered into this tentative agreement subject,
of course, to your Honor's approval that
in order that Mr. Wolf's accountant might
get to work promptly we would stop the
examination long enough to put Mr. Dock-
endorff on the stand, identify the records
he has produced, offer them in evidence,
show how our exhibits were made up, prove
the method in which they were made, of-
fer them in evidence and after these pa- 747
pers were received in evidence then the oth-
er side might postpone their cross exam-
ination until they had an opportunity to
go through them with the accountants they
selected. The only question then left open
would be the question of where the exhibits
were to be during the examination. Of
course they are very valuable to us, they
represent the evidence of our rights and
while we are perfectly willing to turn them
over to the Court we don't want them put

748 where they will be mislaid or lost or anything happen to them. We are quite willing to turn them over to your Honor or to make any arrangement which your Honor may direct. Does the arrangement so far meet with your Honor's approval?

Master: If you have the records here that is in obedience to the original direction and I cannot complain of that.

JOHN E. DOCKENDORFF, recalled.

By Mr. Cohen:

749 Q. Mr. Dockendorff, do you keep any ledger account of your transactions with your customers, say with the Schwab-Kepner Company?

A. I do not.

Q. Do you keep any cash book containing entries of your transaction with the Schwab-Kepner Company?

A. No, I do not.

Q. Do you keep any Journal?

A. No, sir.

Q. What records have you of the transfer of the accounts receivable from time to time from the Schwab-Kepner Company?

750 A. All these that I have here. Represented by schedules.

Q. Will you produce them?

A. Here. And all the—

Q. Now, just follow my questions. What records have you got of the accounts which you received from the Schwab-Kepner Company?

A. These schedules.

Q. The pile of schedules which you now show us?

A. Yes, sir.

Q. What are the papers which you are now producing? 751

A. These are schedules made up in the office of the Schwab-Kepner Company at the time of the assignment of the accounts that are listed on these sechedules and came to me daily with the assigned accounts.

Q. In other words these are the daily sheets, each of which are signed by the Schwab-Kepner Company accompanying the certificates mentioned in detail in each sheet?

A. Yes, sir.

Q. Have you produced every one of those sheets which you received from the Schwab-Kepner Company? 752

A. Yes, sir, and I have here—

Q. Now just a minute, please. You call these schedules?

A. Yes.

Q. Now, accompanying these schedules you received a certificate of indebtedness covering each one of the accounts mentioned in these schedules, did you?

A. Yes, sir.

Q. And is this the form in which each one of these certificates were?

A. Yes, sir.

753

Marked Exhibit P1, for identification, January 27th, 1911.

Q. Now, this Exhibit P1 for identification of this date is what you have variously referred to from time to time as the assignment of the accounts or the certificate of indebtedness?

A. Yes, sir.

Q. That is the form?

A. Yes, sir.

Q. Now, what records have you got of the ad-

754 vances which you made upon these schedules and assignments of account?

A. The debit vouchers.

Q. And where are those?

A. Here.

Q. And does the bundle you have produced contain the debit vouchers showing the advances which you have made to the Schwab-Kepner Company?

A. Yes, sir.

Q. Now, the accounts receivable assigned to you were, of course, as you have testified paid in the first instance to the Schwab-Kepner Company and
755 then were sent to you by the Schwab-Kepner Company, that was the practice, was it not?

A. Yes, sir.

Q. What records have you of the remittances from the Schwab-Kepner Company?

A. Daily remittance schedules listing all the checks that were sent down daily to me.

Q. These sheets which you just hand us are called what, remittance sheets?

A. Remittance sheets.

Q. And these are the daily sheets which show the remittances of the Schwab-Kepner Company?

A. Yes, sir.

756 Q. You have produced all of those that you have in your office? A. Yes, sir.

Q. Every one of them?

A. Yes, sir.

Q. And so far as you know in this pile are contained every one of the remittance sheets which you ever received from the Schwab-Kepner Company?

A. Yes, sir.

Q. And every remittance that you received is upon these sheets?

A. Yes, sir. These sheets were made in the Schwab-Kepner Company also.

Q. They were made at their office and came down to you with the remittance and were checked off at your office? 757

A. Yes, sir, and they contain memoranda where there was any difference between the total as reported on these sheets by the Schwab-Kepner Company and as checked up by my cashier in the office.

Q. Have you any other records of original entry of your transactions with the Schwab-Kepner Company?

A. No, sir, I have not, except loose leaf index cards for the debtors where the accounts were posted.

Q. You have in your office, have you not, Mr. Dockendorff, a very large card index file? 758

A. I have over twenty thousand names, twenty thousand cards.

Q. And these are like the ones you produce samples of here?

A. Yes, sir.

Q. And they are merely the account with the debtors?

A. Yes, sir.

Q. And each one of these cards contains a record of the charges against the debtor made by the transfer of the account by your customers and also the credits for the payments which he makes? 759

A. Yes.

Q. But they do not contain any records of any original entries of the transactions with the Schwab-Kepner Company?

A. No, sir.

Q. They merely represent the record of your transactions with the debtor whose account you are trying to collect?

A. Yes, sir.

760 Q. There is a separate card for each debtor, is there not?

A. Yes.

Q. But the assignments of the accounts are contained in these original schedules which you have produced?

A. Yes, sir.

Q. And every account which you received is contained in these schedules which you have produced?

A. Yes.

Q. And every remittance which you received is contained in these remittance sheets which came
761 direct from the Schwab-Kepner Company?

A. Yes.

Q. And the dates of the remittances are shown on these sheets?

A. Yes.

Q. Now, you have in your office what you call a "tickler" of maturity dates, have you not?

A. Yes.

Q. And have you produced that here?

A. I have produced a sample, yes.

Q. And that merely contains a notation showing when the debtor is to pay his account, does it not?

762 A. Yes, for the maturity clerk.

Q. That is for the purpose of collecting the account?

A. Yes, sir.

Q. That has nothing to do with your transactions with the Schwab-Kepner Company?

A. No.

Q. And can you truthfully say that when you produce these remittance sheets and the schedules and the checks, the original checks showing advances, that you have produced all the records which you have in your office of the transactions with the Schwab-Kepner Company?

A. Yes, with the exception of these index cards and maturity cards and a book wherein I post the totals of these schedules which contains my private business with the banks that I did business with and do business with now. 763

Q. That book contains entries of your private transactions with your own banks?

A. Yes, referring to the collateral.

Q. And shows the distribution if the collateral which you received from the Schwab-Kepner Company?

A. Yes, sir.

Q. But the entries posted in there of the collateral you receive are merely from these original entries which you have here? 764

A. That is correct.

Q. Now, you were advised by your counsel to prepare schedules for several dates, were such schedules prepared in your office?

A. Yes, sir.

Q. Will you please tell us now from what data and from what records in your office those schedules were prepared?

A. The lists were made out originally from the ledger cards.

Q. From these cards here?

A. From these index cards of the debtors and then they were checked up with the remittance sheets and with the schedules of collateral. 765

Mr. Rosenberg: I move that the answer be stricken out, he says these papers and these papers and does not identify them. For the information and convenience of the Court while the witness is referring to the papers they ought to be marked for identification.

Motion denied.

Q. In short, Mr. Dockendorff, these schedules

766 which you prepared were made up from the items contained in the so-called schedules now in front of you which are the sheets that you received daily accompanying the assignments from the Schwab-Kepner Company, and from these remittance sheets which contain the original entries of the remittances received from the Schwab-Kepner Company?

A. Yes, sir.

Q. Now, from what source were the items in those schedules showing your advances taken, were they taken from the original checks which you have here?

767 A. Those do not appear on the lists that you have asked me to prepare. The moneys paid the Schwab-Kepner Company appear in the account current.

Q. Have you submitted that account current to the other side?

A. Yes.

Q. And that was prepared from these checks?

A. These debit vouchers.

Q. Now, Mr. Dockendorff, besides these advances made to the Schwab-Kepner Company there were certain charges for interest and other things from time to time, were there not?

768 A. Yes.

Q. Now, the records of these charges as I understand from you was contained prior to a certain date in checks contained in this bundle?

A. Yes.

Q. And after that date where are the records of those charges?

A. A charge slip was sent to the Schwab-Kepner Company accompanying the statement for the balance.

Q. And were those charge slips taken from a book and have you the stubs?

A. I have.

Q. And the originals of those charge slips are now, so far as you know, in the possession of the Receivers? 769

Mr. Wolf: I object.

Question withdrawn.

Q. Where are those charge slips at the present time, so far as you know?

A. They were delivered to the Schwab-Kepner Company at the time the charges were made.

Q. How many of those charge slips are there which you turned over?

A. Twenty items aggregating $20,131.

Q. Have you a list of those here?

A. I have. 770

Mr. Cohen: Mr. Wolf, I hand you this list now and ask you to produce at a subsequent hearing if you have them these original charge slips.

Q. Now, in the absence of the original slips from what source have you taken the data of charges appearing in these schedules?

A. From the stubs.

Q. From the original stubs?

A. Which are numbered to correspond with the numbers of the charge slips mailed.

Q. Now, we have been referring, Mr. Dockendorf, to certain schedules made up to show the condition on several dates, the 16th of May, the 1st of July and the 1st of August? 771

A. Yes.

Q. I now hand you the three copies which were turned over to counsel for the Receivers and Trustee and ask you please to explain what each column indicates?

A. The first column gives the date of the assignment of the account by the Schwab-Kepner Com-

772 pany to me, the second column gives the number of the debtor's ledger index card.

Q. You are now referring to the kind of cards of which you have produced a sample?

A. Yes. The third column gives the name of the debtor, purchaser of the goods from the Schwab-Kepner Company, the fourth column gives the amount of the accounts assigned, the fifth column gives the date when that account is paid by the purchaser—no, I am wrong, the date when that account is charged off. The next column gives any data where this charge was charged off by any other reason than by the check received
773 from the debtor through the Schwab-Kepner Company, and the last column gives the actual cash received in the form of a check from the debtor through the Schwab-Kepner Company in payment of the account showing the exact amount of cash realized against the account with the exception of those items where opposite them in the previous column there is an explanation that the merchandise has been returned or the charge cancelled in some other way.

Mr. Cohen: In the schedule of July 1st the last two columns have been transposed.

774 Q. Now, Mr. Dockendorff, have you been answering these questions with certain yellow sheets in your hands?

A. Yes, sir.

Q. And these yellow sheets are the original schedules prepared by your clerks of which the three schedules in typewriting handed to counsel for the Receivers and Trustee are copies?

A. Yes, sir.

Q. Now, these yellow sheets as I understand you are prepared from the data contained in the schedules representing the transmission of ac-

counts to you from the Schwab-Kepner Company, 775
from the remittance sheets containing the records of remittances to you, is that correct?

A. That is correct?

Q. Now, Mr. Dockendorf, what records have you got from which the data in these yellow sheets can be verified?

A. What I have before me.

Q. Anything else?

A. No, sir.

Q. And what have you before you?

A. The schedules of collateral received from the Schwab-Kepner Company and the remittances sheets of checks received from the Schwab-Kepner 776
Company.

Q. And those remittance sheets are this pile of papers and the schedules of assignment are this pile? (Indicating.)

A. Yes, sir.

Q. Now, then, have you prepared a list of the collateral schedules contained in this pile?

A. I have.

Mr. Cohen: Now, if your Honor pleases, I offer in evidence these schedules of collateral, together with the list of the schedules, the schedules of remittances with these sheets showing the number of remittances; 777
I offer in evidence all of these vouchers, the three schedules of May 16th, July 1st and August 1st, 1910 and the certificate of indebtedness marked Exhibit P1, for identification of this date.

Mr. Wolf: I don't want to object now to the introduction of these papers in evidence, nor do I want to waive my right to object hereafter when we have had an opportunity to examine them. Of course, we do not object to these original documents going

778 into evidence but summaries and conclusions and statements as to what the data, as to what the documents show as contained in the reports may not be introduced in the form of statements which we may as are not as yet in our possession, and therefore I would like it left this way, that they may be offered in evidence now, subject to my right hereafter to object to their introduction and a motion to strike them out with the same force and effect as if they were made now.

Mr. Cohen: I have no objection to Mr.
779 Wolf's making a motion to strike out any portion of the schedules which we have prepared. I want it distinctly understood that if Mr. Wolf's accountants find any inaccuracies in these schedules which we have prepared of May 16th, July 1st and August 1st that the schedules shall be corrected and revised to the extent of those corrections. These are not offered in evidence except for the purpose of assisting the Court as accountants' reports are offered in evidence for the purpose of saving the Court the job of going through these figures, but the others
780 are original records which we were called upon to produce and have produced and certainly no objection can be raised to that. In the first place they are sheets which came from the Schwab-Kepner Company themselves, the schedules of collateral are signed by the Schwab-Kepner Company, the remittance sheets were prepared in the Schwab-Kepner office and came down from them and certainly the cancelled vouchers showing the advances are from them. Of course, I recognize that counsel for the Receivers

and Trustee is not prepared now to examine as to these papers and as to the vouchers I have already agreed that he shall have the opportunity of postponing his cross examination on these points, but it seems to me when we were directed to produce the records and we come into Court and produce them that they should be received in evidence. 781

Master: I think Mr. Wolf's request is a proper one, he ought to have opportunity to examine the records before he is heard upon an objection. I will receive them in evidence subject to right of counsel for the Trustee and Receivers to move to strike them out with the same force and effect as if he objected now. 782

Mr. Cohen: In view of the fact that these schedules of May 16th, July 1st and August 1st are copies, will you require me to produce the man in Mr. Dockendorf's office who actually made up the yellow sheets for the purpose of showing that they were actually taken from these records?

Mr. Wolf: I cannot tell now. If I do I shall be glad to let you know.

Mr. Cohen: Then I may assume that we will not be required to produce the clerks unless you notify us. 783

Mr. Wolf: That is correct.

By Mr. Cohen:

Q. Do you know whether or not the Schwab Kepner Company kept duplicates of the schedules of collateral and of the remittance sheets which have been received in evidence here?

A. They were supposed to and they should have.

Mr. Wolf: I move to strike out.

Motion allowed.

784 A. I think they did.

Mr. Wolf: I move to strike out.

Master: The question, Mr. Dockendorff, is whether you know.

A. I don't know.

By Mr. Wolf:

Q. You have produced a large number of checks showing your advances to the Schwab-Kepner Company—are there any entries on the stubs or on the checks themselves which show the schedule of accounts or the accounts against which the advances were made?

785 A. No.

Q. Does the stub of the check show anything more than the check itself?

A. Nothing more.

Q. Now, take for instance, check 127 of May 27th, 1910 for $1,400, how can the accountants tell against which particular transfer or schedule of accounts that advance was made?

Mr. Cohen: I object.

A. We never made any particular loan against any particular collateral. I have already testified to that.

786 Q. You advanced on May 27th, 1910 $1,400 as appears by these checks, this check 127, what did you receive on that day which enabled you to make that advance to the Schwab-Kepner Company?

A. I don't know whether I received anything or not. I felt that the account warranted me giving them $1,400 on that day.

Q. The stub check don't show anything on that subject at all?

A. No, sir.

Q. Now, Mr. Dockendorff, you have testified

about the card index that you had showing the dates when the accounts of debtors became due? 787

A. Yes.

Q. And you have produced a sample of that card index?

A. Yes.

Q. Now, when an account became due and remained unpaid what would be the course of business between yourself and the Schwab-Kepner Company concerning that account?

A. We would report it.

Q. How?

A. By sending them an overdue list.

Q. How often did you send them an overdue list? 788

A. Daily.

Q. Were those on printed blanks?

A. Yes.

Q. Can you tell us what the blanks said?

A. That we charged these accounts back to them in case the accounts were overdue more than a certain number of days.

Q. Now, where are these charged back to, the overdue accounts?

A. Mailed to the Schwab-Kepner Company.

Q. Have you any copies?

A. I think so.

Q. Have you carbon copies of the records sent to the Schwab-Kepner Company or are they kept in books? 789

A. They are loose sheets.

Q. Are they produced here?

A. No, they are not but they appear in the charges in the account current and they also appear in these lists and these lists contain the dates when these accounts were charged back.

Q. By these lists you refer to the lists—

A. Of May 16th, July 1st and August 1st.

790 Q. Now, take the list of August 1st, 1910 and show me the first item of that account which was charged back by reason of the non-payment of the bill.

A. By reason of the non-payment of the bill?

Q. Yes.

A. I would have to ask the clerks to answer that.

Q. What records have you produced that will enable our accountant to ascertain that fact?

A. The date of the bill appears in the first column, and the date of the cancellation.

Q. The date of the bill appears in the first
791 column?

A. Yes, in the first column and will be readily identified as to the terms of sale with the books of the Schwab-Kepner Company, and the date of the cancellation.

Q. The date of the cancellation is in which column?

A. In the 5th column.

By Mr. Cohen:

Q. What do you mean by charge back, make that expression clear.

A. Any account that was overdue we would not
792 consider for the purposes of making any advances in the mass of collateral that we had for figuring the loan balance.

Q. In other words it would not be included in ascertaining the 80%, but it would still remain an open account which you would make an effort to collect?

A. Yes.

Q. You didn't return the security?

A. By no means.

Q. You merely mean that for the purposes of

finding out how much collateral there was you did not treat that account as collateral? 793

A. That is, as collateral for figuring the loan but it was part of the collateral I held for advances.

By Mr. Wolf:

Q. Now, let us have the statement of May 16th, 1910, the first item on that account is April 15th, bill 8245 Theodore F. Boehle $321.45, what does the date July 2nd, mean?

A. The date when the merchandise was returned and reported to me by Schwab-Kepner Company.

Q. The next item is merchandise returned $210.91, what does that mean? 794

A. That means that a credit was given or rather that that account was charged off as merchandise having been returned on that date and for the purpose for which this list was made up $210.91 was put in here to show what merchandise was returned.

Q. In other words the Schwab-Kepner Company notified you that $210.91 merchandise had been returned by Boehle & Company, thus practically cancelling the account?

A. Actually cancelling the account.

Q. What did you do with the account? 795

A. It was cancelled.

Q. What did you do with reference to getting the merchandise.

A. We charged $210.91 against them.

Q. In the account current as a charge against them?

A. Yes.

Q. Now, take the item on the next page of April 13th, $216, I. C. Herman & Company, $67.02, July 22nd, under the column marked amount there is a blank, what does that indicate?

A. That nothing has been received on that ac-

796 count either credit for returned merchandise or cash.

Q. And that account is still open and unpaid?

A. That account apparently is still open and unpaid.

Q. Now, taking the August 1st, 1910 list and in the last column marked cash under, for instance, the item of December 29th, 1909, bill 6674, Colonial Handkerchief Company $593.53 August 20th, under the merchandise column, $593.53, what does that mean?

A. That was reported as $593.53 of merchandise being retudned by the Colonial Handkerchief Com-
797 pany on August 20th and it was so reported by the Schwab-Kepner Company and it was so charged off to that amount.

Q. Take the item of, for instance, March 5th, 8674, Colonial Handkerchief Company $52.15 under date of September 6th there is a blank under merchandise and cash.

A. Nothing was realized on that account up to September 6th. That is not the due date.

Q. What is that?

A. That is the date it was cancelled.

Q. That indicates the date when it was charged back?

798 A. Yes.

Q. Now, Mr. Dockendorff, when Mr. Williams reported to you that approximately $100,000 of the outstanding accounts of the Schwab-Kepner Company were worthless by reason of the fact that approximately $60,000 did not exist because credits had not been passed through the books and that $40,000 represented uncollectable accounts, did you make any charge back of those items?

Mr. Cohen: I object on the ground that it assumes facts that do not appear on the record and that this is going into a general

examination which is out of place at present. 799

Mr. Wolf: My object is to ascertain what records, other than these, he has and to get them. I call upon Mr. Dockendorff to produce all of the recharges made to the Schwab-Kepner Company. I ask him to produce his carbon copies showing all recharges made to the Schwab-Kepner Company and to deliver them to the Court or its nominee.

Mr. Cohen: Prior to June 17th the charge back records are in these papers and are represented by checks that we gave to the Schwab-Kepner Company which they endorsed back to us. After June 17th we have the carbon copies of the charge records and we can produce them. 800

By Mr. Cohen:

Q. What was the system of keeping records of the charges back against the Schwab-Kepner Company?

A. All overdue accounts were paid by check by the Schwab-Kepner Company up to June 15th or 16th or thereabouts, 1910.

Q. And after that date?

A. After that date we would send them a memorandum of the charges that we would make to the account for overdue accounts lifted on those dates. 801

By Mr. Wolf:

Q. You have just testified in answer to your counsel's questions that prior to about the 16th of June, 1910 when any accounts were charged back to the Schwab-Kepner Company the Schwab-Kepner Company gave a check for those re-charges, is that correct?

A. That is correct.

802 Q. Is it not the fact that the check which they gave to you in payment of those re-charges was a check drawn to their order and by them endorsed to you?

A. In very few instances. I think that was resorted to only when the Schwab-Kepner Company was so hard up that we would insist upon having the payment even though we might hold that check for a day or two.

Q. You say that your check was given to them and endorsed back by them to you in very few instances?

A. Very few.

803 Q. But it was done in some instances?

A. I think so, yes.

Q. When was it done and when was it not done?

A. I couldn't tell you. The vouchers will speak for themselves.

Q. What state of facts, under what state of facts was it done and under what state of facts was it not done?

A. None specified.

Q. What was the course of dealing?

A. That was the course of dealing up to very few instances before June and the only reason that it was changed was when we found that we would
804 have to hold Schwab-Kepner Company checks for a day or two before we could deposit them and in order to keep our records clear we preferred to give our checks which we knew were good and have them endorsed back to us so that we might clear the transaction on our books.

Q. When that was not done how would the Schwab-Kepner Company make payments of these re-charges prior to June 16th?

A. Their own checks.

Q. To your order?

A. To my order.

Q. Drawn on their bank account?

805 A. On their bank account.

Q. But the only funds in that bank account were the checks you had given them against the assigned accounts?

A. Supposedly, yes.

Q. So that was the situation prior to the 16th of June?

A. Yes.

Q. What has been the custom since the 16th of June, 1910?

A. That we have simply charged the account and made a charge slip to them containing the statement, an itemized statement, of what that charge 806 contained and that was due to the fact that it was a general change made in my office in my system of doing business with every client.

Q. Then subsequent to the 16th of June whenever accounts were not paid or for any other reason should be re-charged you simply charged them in the account current with the amount of the re-charge?

A. Prior to June?

Q. Subsequent I said.

A. We would charge their account and send them a slip.

Q. And the charge would go against them in the 807 account current?

A. You mean this account current?

Q. In the account current with the Schwab-Kepner Company?

A. You mean this account current?

Q. I mean the account current with the Schwab-Kepner Company?

A. I never kept an account current with the Schwab-Kepner Company.

Q. In what account would you make the charge

808 against them for the amount of the re-charged accounts?

A. It would be a charge against their credit, the money that they would be entitled to for the collateral we had there.

Q. In other words, let us say that on the first of August, 1910, the amount you would advance would be $10,000, and that on that day you re-charged $5,000, for some reason you would hand them a check for $5,000, deducting the $5,000 from the $10,000, to which they were entitled?

A. Yes.

Q. Was that the custom after June 16th, 1910?

809 A. Yes.

Q. Before the 16th of June, 1910, what would be the entry that you would make in your books concerning the recharging of the accounts?

A. What would be the entry?

Q. Yes.

A. These checks.

Q. What entry would be made in your books when you didn't give them your check and they gave you their check?

A. These checks would come down as a remittance and you will find that the remittance sheets contain the overdue accounts charged for every

810 remittance that we received from the Schwab-Kepner Company we should have a remittance sheet and that remittance sheet would contain the accounts being cancelled by that check of the Schwab-Kepner Company.

Q. Now, Mr. Dockendorf, what records did you keep subsequent to the 16th day of June by which you could go to the records and at a glance in a comparatively short while tell the situation and condition of your account with the Schwab-Kepner Company?

Mr. Cohen: I object on the ground that

the question assumes that he kept such rec- 811
ords.

Objection overruled.

A. I have stated that we kept various accounts with our banks and those records compiled together would give us an idea of just about how the account was.

By the Referee:

Q. What Mr. Wolf wants to know—suppose this morning you wanted to know just how their account stood, what records would you go to. Just tell us the process you would go through to find out how their account stood this morning? 812

A. We would ascertain the balances of cash that we might have in any bank accounts that we were keeping a Schwab-Kepner account with, we would ascertain what cash collateral we had and we would figure out the loan due on that collateral after going over the collateral and then we would decide whether they were entitled to five or ten or fifteen thousand.

Q. Did you have a separate bank account for their transactions?

A. Not one, no, several.

By Mr. Wolf:

813

Q. Let us take any day as an illustration, take the first of August, 1910; you want to ascertain the amount that the Schwab-Kepner Company owes you and the face amount of collateral that you hold; how would you do it, what would you do?

A. I would know the exact amount of collateral pledged with the banks, I would know the exact balance.

Q. How would you know the amount of collateral with the banks?

A. On the sheets that I keep for each bank for

814 each account, for each check in the account. I can tell at a glance exactly what that loan balance is and exactly what amount of collateral the bank has and by adding those various amounts together I would have that within two or three minutes and in addition to that I would know how much collateral I had in the office of overdue collateral, maturity of which had already lapsed or collateral that I did not consider sufficiently good to consider in the balance of collateral for adjusting the loan.

Q. Can you tell from the records here in front of you how the account stood on the first day of August, 1910, what the indebtedness was and what
815 was the face amount of the collateral?

A. Yes, you can work that out.

Q. You say you can do it in two or three minutes?

A. No, you can't from this. You can tell it from the account current after you once verify that account current.

Q. Let us assume that all the records here are verified, can you tell me what the condition of the account was on August 1st, first the indebtedness and second the amount of collateral?

A. You couldn't do it in two or three minutes.

Q. How long would it take you?

816 A. You will have to verify all this.

Q. Let us assume that the account current is accepted as correct and everything you have given us is correct?

A. On verifying the account current and these lists you can easily carry your loan balance and after that is done you can tell.

Q. From the papers you have produced what would you have to do to ascertain the condition of affairs on any given date, say the first of August?

Mr. Cohen: We have shown you the con-

dition of affairs by these complete schedules which are offered in evidence. I object to the question on the ground that it is immaterial and irrelevant. The witness has already testified that for the purpose of knowing from day to day, for the purpose of informing himself he went to entirely different records that have no material bearing here at all, but he has produced the original entries from which any accountant can ascertain the condition on the first of August or any other date and he has produced a very carefully prepared statement showing the condition on three distinct dates; now, it seems to me that the questions and answers already indicate that there are no other records that Mr. Dockendorf has except these and I don't see why we should be wasting time examining this witness as to the method he would employ to check up the statements submitted here. 817 818

Mr. Wolf: My answer to that is this—the accountant has suggested to me that it is a tremendous task to find out what the condition is and there must be some record, some account somewhere by which Mr. Dockendorf can obtain at a glance the information that the Schwab-Kepner Company owe him so much for which he has a face amount of collateral of so much and his testimony shows that that is so and it must be so in an ordinary and regular course of business and I want to show that the records produced here are not the original and only records. 819

Objection overruled.

Question read.

A. The total advances from the account current

820 less the total credits should give you the loan balance of that date.

Q. Now, by the account current you mean Exhibit P9?

A. Yes.

Q. Now, this account current, Exhibit P9 has on the left hand side Dr. and the first item $8800; that means an advance by you?

A. Yes.

Q. And all the charges in the account current Exhibit P9, are they all represented by money advances against outstanding accounts?

A. All the charges there are moneys given to
821 the Schwab-Kepner Company.

Q. Does it also represent interest and commission charges?

A. It does.

Q. Does it also represent checks given to the Schwab-Kepner Company for the purpose of re-endorsing to you for the recharges of accounts?

A. Naturally.

Q. Does it include the accounts charged back?

A. That I can't answer but my clerk can answer that question. I really thought that they were included there but it may be that that has simply been treated as a substitution of collateral which
822 don't in any way affect the account.

Q. In totaling it up then you have the amount they owe you at a glance?

A. Yes, sir.

Q. Now, will you please tell us how I can ascertain or how you would ascertain at any given time the face amount of collateral which you held?

A. That you could not do from the account current of course.

Q. Now, tell me what we could get that information from?

A. The amount as of any one day?

Q. Yes. 823

A. I haven't got it and you could get it just as well as I could get it.

Q. Suppose you wanted it in the ordinary course of business? I would have it somewhere as I have done for these three lists.

Q. Without going into details could you tell the gross total of collateral that you held?

A. No, unless I went to the trouble of preparing a list for you.

Q. How could you ever tell what the situation of the account was between you and the Schwab-Kepner Company if you didin't know the face amount of collateral? 824

A. I have already testified that by knowing the amount of collateral at the banks supposed to be good and by knowing the balance and having a general idea of the amount of accounts not good in my office I could tell within $5,000 whether the Schwab-Kepner Company was entitled to ten or twenty or thirty thousand dollars at any one date and in a transaction of this kind involving hundreds of thousands, five, ten or fifteen thousand one way or the other made no difference.

Q. Now, let us assume that you kept the Schwab-Kepner Company account at a bank—

A. I did not say that. 825

Q. Did you?

A. I didn't.

Q. You said you could tell by going to the banks and ascertaining the balance?

A. Yes.

Q. What do you mean?

A. That I had various accounts for the Schwab-Kepner Company and by compiling these various accounts together I would be able to tell.

Q. Suppose you did business with the "X" bank,

826 did you have an account with the "X" bank in your name for the Schwab-Kepner Company accounts?

Mr. Cohen: I object on the ground that it is incompetent and irrelevant and immaterial, that it prys into the relations of Mr. Beckendorf with his own banks and has no connection whatever with the Schwab-Kepner Company matter and is not part of the records of his transactions with the Schwab-Kepner Company.

Objection overruled.

Question read.

827 Q. I will add to that—and was it exclusively for the Schwab-Kepner Company accounts?

A. Yes, it was exclusively for the Schwab-Kepner Company accounts, that particular account with that particular bank.

Q. Let us assume that it is under some designation known to you by which you could point to it and say "that is my depository by my designation under an arrangement by which that bank is the transferee, the pledgee or depository of the accounts of customers of the Schwab-Kepner Company.

A. Yes, that is right.

By the Master:

828 Q. Did you keep a record of all the Schwab-Kepner transactions in this one bank account?

A. No.

Q. Whatever accounts you—

A. Whatever accounts I had for Schwab-Kepner Company business were exclusively for Schwab-Kepner Company business.

By Mr. Wolf:

Q. Now, I understand that in answer to the Master's question you testified that you had more than

one account at different banks for the Schwab-Kepner Company business? 829

A. Yes.

Q. And I understand your testimony to be that you could tell the amount of collateral that you held of the Schwab-Kepner Company on any given date by referring to the records you had with the banks?

A. In addition to the collateral I had in my office.

Q. Did you have any collateral in your office besides the overdue collateral?

A. Yes, collateral against converns that I didn't care to advance on. 830

Q. How could you tell the amount of collateral you had in the office?

A. You mean of any one day?

Q. Yes.

A. I have stated that I couldn't give you that information. I have no record of it in my own office.

Q. Say you wanted it within five or ten thousand?

A. Exactly what I have done for the May 16th, July 1st and August 1st lists. I would have to go to these sheets, the remittance sheets and schedules sheets, my debtor index cards and ascertain ex- 831 actly what amount of collateral was open on that date.

Q. Supposing you wanted to ascertain on the first of June, 1910, what the collateral was that you held in your office of the Schwab-Kepner Company, approximately how long would that take you to ascertain?

A. It might take me a week.

Q. Now, is that the only way that you had of ascertaining the face amount of collateral that they had in your office?

A. That is hardly a fair question.

832 Q. I don't want to be unfair. Suppose you answer it in your own way?

A. You try first to pin me down to an exact statement of collateral and now you say is that the only way I can state it.

Q. Tell me any way in which you could tell me approximately the face value, the amount of collateral.

A. I have already testified that twice, by knowing the amount of collateral which the banks have, the amount I have in my office which I could always tell within five or ten thousand. I could tell from the overdue lists—the overdue lists I would remit
833 to the Schwab-Kepner Company not only daily but an aggregate of these overdue lists of accounts upon which were remitted to the Schwab-Kepner Company once a month.

Q. I asked you whether you had any accounts in your office besides the overdue accounts and you testified that you did.

A. Yes, that is correct. In addition to these overdue lists, overdue accounts, we would have accounts against any concerns whose credit rating we didn't want. I know at one time I had as much as $150,000 of accounts.

Q. In your office?

834 A. Outside of the accounts in the banks.

Q. To me it seems inconceivable that it would take you a week to find out how you stood at any given point of time with the Schwab-Kepner Company.

A. I can't help that, Mr. Wolf.

Q. If I am wrong in my understanding of the time I want to know it.

A. That is correct.

Q. Now, you say you could ascertain the amount of collateral at the banks, how could that be ascertained?

A. From the sheets, records we kept with our banks. 835

Q. In other words, you had records in your office to show the amount of collateral you assigned to the banks and you would consult those records to ascertain the amount of accounts of the Schwab-Kepner Company which the banks held?

A. Yes, which would be added to the amount in our office and which we would know approximately, within five or ten thousand dollars at any time.

Q. Well, now, I have asked you how you know that, is it a matter of memory or of records?

A. I might say of records, from these lists I have mentioned. 836

Q. Well, from these lists you say it would take you a week or two?

A. The overdue lists that I speak of are not these.

Q. How would the overdue lists help you to ascertain the amount of collateral that you held in your office?

A. In a general way.

Q. How would it?

A. Because we would know the totals of this list.

Q. Assume that you had $20,000 of overdue accounts in your office what would that indicate as to the total amount of collateral? 837

A. What do you mean?

Q. Assume that on the first of July you had $20,000 of overdue accounts, how would that assist you in ascertaining the amount of collateral that you had in the office?

A. When?

Q. On that day?

A. They would give me the list.

Q. How would that assist you in ascertaining the amount not overdue?

A. That was not overdue?

838 Q. Yes?

A. I have already stated that amount would be with the banks and the amount with the banks would be in these sheets.

Q. You have already testified that you held a large amount of accounts not overdue and not pledged with the banks?

A. Only with concerns we didn't care to accept.

Master: You mean by that that you didn't count them as collateral?

A. Anything that I had in my office I did not count as collateral for the purpose of ascertaining
839 the loan.

Mr. Cohen: But you treated it as security for any loans?

A. Yes.

Q. Now, these accounts which you had in your office, have you ever approved of them so as to make an advance against them?

A. Oh, yes, we frequently would advance against a concern that we might reject afterwards. That all depends upon the question of credit.

Master: Then you would charge it back?

840 A. Yes, sir.

Q. Well, I want to find out—these accounts you had in the office, had they always from the beginning of the accounts been in your office or had they been at the banks and re-charged by the banks to you and taken up by you, or on the other hand had they been in your office from the beginning to the time when they were charged back?

A. That would be the general way. Any account that I didn't like would remain in my office from the time I received it up to the time it was cancelled.

Q. And the general trend of the business would 841
be that they never went to the banks but always from the inception remained in your office?

A. If, by the inception you mean from the assignment of the accounts?

Q. Yes.

A. Yes.

Q. So those accounts had never been accepted by you and no advances had been made against them?

A. Well, that is hardly fair.

Q. Well, answer that in your own way.

A. I have stated that I do not make specific loans against specific collateral. It was part of the collateral for the whole loan for Schwab-Kepner 842
Company.

Q. Under the agreement you were to advance 80 per cent. of 96 per cent.?

A. Of what?

Q. Of the face amount of collateral?

A. Of the approved accounts.

Q. These accounts which you had in your office you had never made any specific advances against those accounts of any kind, you claimed to hold them as collateral for the advances made by you on the general running account?

A. That was part of the collateral against which the loans were made. 843

Q. But the fact is also that you never made any particular loans against them?

Mr. Cohen: I object to that on the ground that it has already been covered.

A. Those accounts were part of the collateral.

Q. I understand that it was part of the collateral that you claim today?

A. No, sir, part of the collateral at the time of the loan.

Objection sustained.

844 Q. In making the advances against good accounts or accounts acceptable to you you eliminated from the calculation these accounts which you say you held but which were not acceptable?

Mr. Cohen: I object to that on the ground that the question assumes that he made advances against the specific accounts.

Objection sustained.

Q. Did you in making advances to the Schwab-Kepner Company eliminate from the calculation of the percentage on the calculation of the amount which you were willing to advance the accounts
845 which were not acceptable to you and about which you have just testified?

A. No, I did not.

Q. Did that go into the calculation in estimating the amount of the advance?

A. Yes, because I hardly know of any time when Schwab-Kepner Company weren't over loaned, that is that they did not have more than 80 per cent. of the approved accounts receivable of the assigned accounts sent to my office.

Recess Taken.

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846 After Recess.

JOHN E. DOCKENDORF, examination resumed.

By Mr. Wolf:

Q. You testified just before lunch that you could look at your records and see the amount of accounts of the Schwab-Kepner Company which you had at the banks?

A. Yes.

Q. Where were the records kept? 847

Mr. Cohen: I object upon the ground that it is immaterial, irrelevant and incompetent. Question withdrawn.

Q. Assume, Mr. Dockendorf, that on June 1st the Schwab-Kepner Company handed to you $10,000 worth of accounts, assume that you approved of $8,000 and disapproved of $2,000, what entries or records were made concerning the transaction? What was the ordinary course of events if that occurred between you and the Schwab-Kepner Company?

A. We would make an entry of the $10,000 of 848
collateral received on that date and we would give them credit for whatever we thought they were entitled to get against that collateral.

Q. What would that be?

A. Assuming that $2,000 of these accounts were not acceptable for the purpose of considering them in the collateral to figure out the 80 per cent. they were entitled to under the contract I assume it would be 80 per cent. of $8,000, but that is hardly an answer because I don't know what it would mean. It would depend entirely upon what money Schwab-Kepner Company wanted on that date and I would have to either meet their require- 849
ments or meet them to the extent I thought advisable for me to meet them considering the entire account.

Q. You would in any event advance them 80 per cent. of $8,000.

A. That is hardly the way to put it.

Q. Put it your way then?

A. They would be entitled to an additional $6,000 under the terms of the contract to whatever they might be entitled to in addition on that date.

850 Q. What designation was made in your books, records or papers to show which of the $10,000 of accounts you had made a loan against or on which of the $10,000, of accounts you had calculated for the purpose of making your loan and which portion you had not calculated for the purpose of making the loan?

Mr. Cohen: I object on the ground that it assumes that some designation was made which is not in the testimony.

Objection sustained.

Q. What did the collateral at the banks rep-
851 resent, the collateral which the banks had of the outstanding accounts of the Schwab-Kepner Company?

Mr. Cohen: I object on the ground that it is incompetent, irrelevant and immaterial and not proper cross examination at this point, we are going into matters that have no bearing on Schwab-Kepner Company.

Objection sustained.

A. Do the records showing the assigned accounts which were turned over by you to the banks show the accounts which you approved of under the
852 agreement between yourself and the Schwab-Kepner Company?

Mr. Cohen: I object upon the ground that it has already been covered, the witness has already testified.

Objection overruled.

Question read:

Mr. Cohen: May I ask whether the question is intended to mean all the accounts?

Mr. Wolf: The question is perfectly clear.

Mr. Cohen: I ask that the question be made definite as to whether the examiner

means all of the accounts or whether it 853
means that he only turned over to the banks
some accounts which he approved.

Master: It cannot mean anything but all to my mind.

Question read:

A. I think so, yes.

Q. So that all of the accounts or substantially all of the accounts which the banks had represented assigned accounts which had been approved of by you under the terms of the agreement between yourself and the Schwab-Kepner Company?

A. For the purpose of ascertaining what Schwab-Kepner Company were entitled to, I think so. 854

Q. Now, did you have in your office any assigned accounts which you had approved of for the purpose of making advances to the Schwab-Kepner Company under the terms of the agreement or had all of the approved accounts been assigned to the bank by you?

A. I don't know how I can answer that question. You would have to specify some time, some date for that. We always had accounts you know, there was a running account between the two offices, there was always a certain amount of remittance in suspense.

Q. That isn't exactly what I asked you. 855

A. I am telling you the reason why it is difficult to answer your question unless you give me some limit of time.

Q. You have testified that at times you had a considerable amount of assigned accounts in your office which you did not in turn assign to the bank?

A. Yes, but most of those overdues, in fact the chances are that all the overdues were originally assigned to the banks but had to be lifted from the banks when the maturity fell due.

Q. Is it a fact, Mr. Dockendorff, that you had

856 in your office a considerable amount of assigned accounts of the debtors of the Schwab-Kepner Company which you never transferred at any time to the banks?

A. Not a very appreciable amount. Some, yes.

Q. Do I understand that the balances which remained in your office represented assigned accounts which had at one time been assigned to the bank and charged back by the bank to you?

A. No, charged back to the Schwab-Kepner Company.

A. The bank originally charged them back to you?

857 A. Yes.

Q. And you charged them back to the Schwab-Kepner Company?

A. Yes.

Q. I understood you to say that you had at one time as much as $150,000 of assigned accounts which were not with the banks?

A. I think that is correct, yes.

Q. Can you tell when that was?

A. I couldn't tell you the date. You see the trouble—

Q. Can you tell me approximately the date, the month?

858 A. I couldn't tell you the month. I might possibly get some data in my office to give you an idea of the date.

Q. What records would show the amount of assigned accounts that you had in your office, assigned accounts of the debtors of the Schwab-Kepner Company which at no time were ever assigned to the bank?

A. At no time were ever assigned to the bank?

Q. At no time.

A. I think the debtor index ledger cards would

show that, we would mark an account that was never assigned "XC." 859

Master: Are those the cards you have here?

A. Yes, sir. I don't think I could show that here because they would all have to be here. The concerns would be "XC" so the whole card would be an "XC" account.

Mr. Cohen: Whether for Schwab-Kepner or anyone else?

A. Whether for Schwab-Kener or anyone else.

Q. What can you say as to the largest amount that you had at any one time of assigned accounts which were never transferred by you in turn to the bank? 860

Mr. Cohen: I object to that on the ground that it is not proper cross examination at this point.

Question withdrawn.

Q. What records show or from what records can it be ascertained and if you have records tell us the method of ascertaining the amount of assigned accounts of the Schwab-Kepner Company which were never assigned by you in turn to the banks? 861

A. I could tell from these schedules that were marked "XC."

Q. Which schedules?

A. The schedules of collateral that would come down.

Q. Take one marked "XC."

Mr. Cohen: You are now referring to the schedules in evidence, the schedules of collateral?

A. Yes, sir. There is an "XC" (referring to

862 schedule 281 opposite the account of R. & R. Handkerchief Company).

Q. What does that indicate?

A. That I would not consider that account in the calculation for the purpose of ascertaining what the Schwab-Kepner Company was entitled to on an 80% basis.

Q. Now, were all of the other accounts except those marked "X(" considered by you in making that computation at the time you received them?

A. Yes.

Q. So that the accountants in going over these records can assume that everything not marked
863 "X(" was computed by you and taken into consideration by you in making your advances to the Schwab-Kepner Company or at least in computing what the Schwab-Kepner Company was entitled to?

A. No, they couldn't because you see they would have to know the amount of overdue accounts on any one date.

Q. Well, of course, less the overdue accounts.

A. Well, that would be a very important thing, they would be absolutely at sea without that.

Q. If they knew them and deducted them they could arrive at it by simply taking the schedules
864 not marked "X(?"

A. Yes, if they could get the "X(" collateral existing at any one date in addition to the overdue accounts and deduct them from the total amount of collateral then they could ascertain the 80%.

Q. Then do I understand that the "X(" collateral so-called never went to the banks?

A. Yes.

Q. How could you tell the amount of accounts overdue at any given date?

A. From the maturity cards.

Q. Wouldn't that only show the amount over- 865
due on that particular date?

A. Yes.

Q. Supposing on the first of August you wanted to find out the total amount of collateral overdue on that date, that was overdue on all preceding dates, how could that be ascertained?

A. There is where it would be difficult. I am afraid—it is better perhaps for me to explain. On that day I would know within $5,000 the condition of that account for the reason that it is a running account, for the reason that it is an account I could easily ascertain what the loan bal-
ance was against the approved collateral, for the 866
reason that I knew within five or ten thousand the amount of overdues that existed in my office as of that date, but because of the fact that that overdue collateral and "X" collateral is really surplus or excess collateral for the purpose of ascertaining what Schwab-Kepner Company is entitled to on a loan basis of 80 per cent. of approved accounts we never did keep an accurate list of those accounts, those overdue accounts and anybody who desired to come to these original papers to ascertain exactly what was open on any one date it would mean going through and preparing a list
exactly the same as we have done as of May 16th, 867
July 1st and August 1st, and we can do that for you for any day that you want.

Q. That is quite a task?

A. I can't help that, that is the condition of the business.

Q. What I am driving at is, can you turn to a ledger book, paper or document of any kind and at a glance say "I have loaned the Schwab-Kepner this amount of money and I have this amount of collateral from them. I have charged back to them a certain amount of accounts overdue and there-

868 fore the way the account stands is thus and so?

A. I couldn't do it. I haven't got it and I have given you the reason why we didn't keep an accurate account of that collateral because it was always considered excess or surplus collateral. I might suggest that you could easily ascertain that in a general way from the Schwab-Kepner Company. If they were obliged to assign all their accounts you could easily find out what the loan balance was, anything that the Schwab-Kepner Company owed me, and you can just as easily find out from the Schwab-Kepner Company ledger how much they had on their books.

869 Q. I am talking about your records?

A. I have given you an explanation that I think is lucid enough.

Mr. Wolf: I think for the moment that we will suspend with Mr. Dockendorf. Of course, whether I will want to recall him will depend upon the progress of the accountants. It may be that we will have to call Mr. Dockendorf for further information or further testimony on the records and I don't want to be understood as waiving that right.

870 Mr. Cohen: He is under examination in this entire proceeding.

By Mr. Cohen:

Q. There came a time during the proceedings now pending before the Master when you were called upon by your counsel to give the exact information that counsel on cross examination to-day has asked you for, namely, the condition of the Schwab-Kepner Company account as to collateral and overdue accounts at any date, did there not?

A. Yes, sir, the first week.

Q. Now, as a matter of actual fact what did you

do for the purpose of getting that information for your own counsel? 871

A. The preparing of these lists.

Q. Those yellow lists, of which the three May 16th, July 1st and August 1st are typewritten copies, were prepared for that very purpose?

A. Exactly.

Q. Did you have any other means or method of furnishing your own counsel with that information except the method that you have explained, the method that you have employed now?

A. No.

Q. Isn't it a fact that in preparing for your own examination counsel had to wait until these 872
lists were compiled before getting that date?

Mr. Wolf: I object, immaterial and incompetent.

Objection overruled.

A. Yes.

Q. Now, Mr. Dockendorf, if your counsel were to ask you to-day to give him the information of the condition of the Schwab-Kepner Company account as to collateral, as to the "XC" account, etc., could you obtain it in any other way and as to the overdue accounts, could you obtain it in any other way than by going through this same process? 873

A. I could not. I would have to make up those lists.

Q. In exactly the same way?

A. Exactly.

Q. So it is true is it not that the lists put in evidence, the schedules put in evidence were just as much for the information of your counsel as they were prepared to comply with the request of counsel for the other side?

A. Yes, sir.

Q. Have you in your office any records of any

874 kind or character outside of these records that you have produced that would enable you on any given day to ascertain the situation of that account?

A. No, sir, not as to the collateral.

Mr. Cohen: We now produce the pink sheets, the duplicate carbon copies, charges on overdue accounts from June 21st, 1910, to November 29th, 1910.

Mr. Wolf: I ask that these be left here subject to the inspection of the Receivers.

Mr. Cohen: I object to that.

Mr. Wolf: I ask that we be given permission to inspect this document and I move to
875 strike out all the evidence they have put in unless they put in all they have. I don't object to these going in evidence.

I will offer in evidence the overdue remittance sheets, so called, produced by Mr. Dockendorf under the stipulation that at any time after an examination thereof I may have the privilege of withdrawing them from evidence. There are forty-seven sheets.

Sheets referred to as collateral schedules of which there are a total of 713 being numbered consecutively from 1 to 414 between
876 September 25th, 1908 and May 30th, 1910, and from 1 to 299 from May 30th, 1910 to November 28th, 1910, are collectively marked Exhibit P11, January 27th, 1911.

The sheets which have been referred to as remittance sheets of which there are a total of 1,200 numbered consecutively from 1 to 883 covering the period from October 7th, 1908 to May 26th, 1910 and from 1 to 317 from May 27th, 1910, to November 29th, 1910, are collectively marked Exhibit P12, January 27th, 1911. The debit vouchers or returned checks numbered 990 are collective-

ly marked Exhibit P13, January 27th, 1911. 877

The list of twenty items aggregating $20,131.03 being the list of charge slips rendered by John E. Dockendorff & Company to the Schwab-Kepner Company is received in evidence and marked Exhibit P14, January 27th, 1911.

Exhibit P1 for identification marked this day is a duplicate of Exhibit P5, in evidence and is therefore not offered in evidence again.

The pink slips, so-called, numbering 47 being carbon copies of overdue charge slips are marked Exhibit R4, January 27th, 1911. 878

Mr. Cohen: We are willing that all of these exhibits shall be delivered by the Special Master to Suffern & Sons, the accountants, taking their receipt for them and with the understanding, of course that we may have access to these documents at any time.

The three statements, one of May 16th, 1910, produced by Mr. Dockendorff is received in evidence subject to the right of the respondents to move to strike out and marked Exhibit P15, January 27th, 1911.

The statement of July 1st is received 879
in evidence subject to the same condition and marked Exhibit P16, January 27th, 1911.

The statement of August 1st is received in evidence subject to the same condition and marked Exhibit P17, January 27th, 1911.

By Mr. Rosenberg:

Q. I show you Exhibit P17, does that purport to show the total amount owing to Dockendorf & Company by the Schwab-Kepner Company on August 1st?

A. No.

880 Q. Does it purport to show the entire collateral of all description held by Dockendorf & Company on August 1st?

A. Yes, all accounts receivable of the Schwab-Kepner Company that were open on that date, August 1st.

Q. When you say open what do you mean by that word?

A. That we had received no cash against it or no credit or no notice that the account was other than open on the books of the Schwab-Kepner Company.

Q. Does this Exhibit P17 show all the collateral
881 on August 1st, 1910, whether that collateral consisted of past due accounts or accounts not yet matured?

A. Yes.

Q. Does it show all the collateral which Dockendorf & Company on that date held whether that collateral had or had not been re-assigned to banks?

A. Yes.

Q. Does it designate in any way which collateral had been assigned and which had not?

A. No.

Q. Does it show which collateral on August 1st,
882 1910, was held by banks and which was held by Dockendorf & Company?

A. No.

Q. Is it possible from the records of Dockendorf & Company to ascertain as to the collateral described in Exhibit P17 which of that collateral was on that date owned or held by the banks to whom or to which such collateral had been re-assigned?

Mr. Cohen: I object on the ground that it is immaterial, irrelevant and incompetent and not within the issues of this case.

Objection overruled.
Question read. 883

A. Yes, I think so.

Q. Is it possible from the records of Dockendorff & Company, the records of your business to ascertain as to the collateral described in Exhibit P17 which of that collateral on that date was assigned to banks?

Mr. Cohen: Same objection.
Same ruling.

A. Yes, I think so.

Q. Is there any doubt of that?

A. No, I don't think so.

Q. There is no doubt of that, is there? 884

A. I don't think so, no.

Q. Would you be absolutely sure?

A. I am as sure as I can be that that would be the situation.

Q. Your records will likewise show, will they not, which of the collateral described in Exhibit P17 was subsequently re-assigned to you by the banks?

A. The banks did not re-assign.

Q. Turn back, re-charge to you?

A. Yes, I think so.

Q. I am going to ask you a question which I think I have asked before. This list of collateral on Exhibit P17 as I understand you represents all of the collateral which on August 1st, 1910, was held either by you or by the institutions to which you had re-assigned such collateral? 885

A. That is right.

Q. Now, what records of your business will show which of that collateral on that date was owned by you and which had been transferred by you to the banks?

A. I have already testified, no records. I would have to go over the list and analyze it.

886 Q. Will you describe in what way the accountants can proceed in reference to the collateral described in Exhibit P17 to ascertain which of that collateral on that date was owned by you and which on that date was owned by banks to which you had assigned it?

Mr. Cohen: I object on the ground that it is immaterial, irrelevant and incompetent. What difference does it make whether he assigned five cents' worth or five hundred cents' worth, the truth of the matter is they were assigned to him and the schedules show what he had and what his relations with the
887 banks were is utterly immaterial.

Objection overruled.

Question read.

A. From the debtors' index cards.

Q. Have you any of those cards here?

A. I showed them this morning.

Q. Will you produce any one of them please?

A. Yes, sir.

Q. You have produced a card which you described as a debtor's card.

A. Debtors' index card.

Q. Now, will you kindly tell me how, looking at
888 that, you can tell whether that account shown by that card is assigned to a bank or whether it was re-assigned or what its history was?

A. I can tell by the symbols that are against each individual invoice what the disposition of the invoice is.

Q. This card which you have produced is 6672, the Ferguson-McKay Dry Goods Company?

A. Yes.

Q. And there is a series of different accounts on that card?

A. Yes.

Q. And those different accounts were assigned at 889
different dates to you by the Schwab-Kepner Company?

A. Yes.

Q. We will take the first one, October 31st, was that account assigned?

A. It was.

Q. Was it subsequently re-assigned?

A. No, it—

Q. Was it assigned by you to a bank?

A. It was reassigned by me, yes.

Q. Has it been reassigned by the bank to you?

A. They never reassign to me. We cancel collateral when it is due. That apparently is open, 890
you see there would be the posting of the payment.

Q. You say the bank never reassigned collateral to you?

A. No.

Q. You borrowed money by reassigning collateral to you?

A. Yes.

Q. When it was found that an account was past due and not paid the bank would want other collateral?

A. That is the practical working out. We charge it and substitute an account.

Q. So that, in effect, the account is re-assigned 891
to you when past due by the bank?

A. Yes.

Q. They hand the account back?

A. Yes, that is right.

Q. Were any of the Ferguson & McKay Dry Goods Company accounts re-assigned to you?

A. Yes, apparently there are two here, paid, $806.84, November 21st and another $636.10 November 21st.

Q. They were paid and the bank got the money and credited your account?

A. That is right.

892 Q. Now, point out any case on any of these cards where an account was re-assigned or returned to you by the bank?

A. Before the customer paid it?

Q. Yes, for any reason.

A. Well, on this particular card you speak of they are apparently all open.

Q. Take any card you choose out of this batch you have produced and show me any account returned to you.

A. Here is one. That is an account that was lifted by an overdue. That red figure means—

Q. There, that is the point that I want. When
893 an account is, to use your phrase, lifted by you from the bank to which you re-assigned it then on these debtors' index cards there is a notation in red ink.

A. Yes, which meant that the Schwab-Kepner Company had paid that before the customer paid it or before the final disposition of the account and when it came it was posted just the same. This apparently is an account charged by an overdue, the O. D. you see there tells me that, May 19th. Apparently that was paid by the Schwab-Kepner Company on May 19th and the customer paid it May 19th. Here is July 22nd, August 2nd,
894 you will find that on July 22nd this account was charged to the Schwab-Kepner Company and on the remittance sheets of August 2nd you will find that the customer sent a check for it.

Q. You haven't answered the question, it is this—referring to that Exhibit P17, it shows a quantity of collateral which you held and which as you have testified was, a large portion of it, assigned by you to your banks to which you took it?

A. Yes.

Q. Now, portions of that collateral were lifted

by you, to use your phrase, or in other words re- 895
turned to you by the banks to which you had assigned it and what I want to know is how we can ascertain how much of the collateral which your banks held on August 1st came back to you and you have said that you can tell by the debtors' index cards.

A. Yes.

Q. Now I am asking you to show me how you can ascertain that.

A. I have shown you two cases right here on this card, one of $219.47 and the other $12,183.25.

Q. What is the characteristic mark which en- 896
ables you to testify that these accounts were lifted by you from the banks?

A. Just that red ink posting.

Q. May I take this then to be the case, that wherever accounts were returned to you by the banks to which you had assigned them for whatever reason that there an entry was made in red ink on the debtors' index card to that effect?

A. No, that don't follow. We might charge Schwab-Kepner with an account that we might not lift until several days afterwards from the bank.

Q. I am not seeking to know the dates, what I 897
am trying to get at is how any accountant going through such records as you produce can ascertain in reference to the collateral which you held on August 1st what of that collateral was returned to you by the banks to which you had assigned it. You have pointed out some red ink marks and I had gathered that those would give the accountants what I want but I am apparently in error. I am asking you now again how our accountants can ascertain the facts as to what collateral was returned to you by the banks after August 1st?

898 By Mr. Wolf:

Q. I am not clear—do I understand that all of the collateral received by you from the Schwab-Kepner Company on the schedules which have been offered in evidence, which is marked "X" represents collateral which was not approved of by you at the time of its receipt?

A. For the purpose of basing a loan value on the total collateral, yes.

Q. Then there were three kinds of collateral, first the "X" which was not approved at the time of its receipt?

A. Yes.

899 Q. The overdue, charged back when it became due?

A. Yes.

Q. And third the accounts reassigned to the bank and which were retained by the bank and which continuously down to the time of their payment remained approved accounts?

A. Yes.

Q. Either the time of their payment or the time of their becoming overdue accounts?

A. That is correct.

Q. Then I understand that all of the collateral which is not marked "X" was actually approved

900 of by you at the time of its receipt for the purposes of computing the loans you would make?

A. No, I have already answered your question that way.

Q. It was approved collateral, the collateral not marked "X" was approved collateral at the time of its receipt?

A. That is right.

Q. You have on the statement of August 1st, 1910, in one of the columns "charged off" what does that mean? On March 4th, No. 7538 A. W.

Miller & Company $31.94 August 4th charged off, what does that mean? 901

A. It means that account was cancelled by some other reason than by either return of merchandise or cash received. You want to bear in mind what this was made up for, first to ascertain the collateral open on that date, second to ascertain what actual cash we got from that collateral and third to ascertain what merchandise was returned on that collateral.

Q. Can you tell us why that account was charged off?

A. I can't tell you offhand. I couldn't tell you that. 902

Q. Referring again to this Exhibit P17 being the August 1st statement which you have submitted, do you know of your own personal knowledge that the collateral therein stated was on that date held by either you or the banks, your assignees?

A. Yes, if you accept that as a record of my records.

Q. This Exhibit P17 does not include any collateral that you received after that date?

A. No, sir.

Q. And the May 16th and July 1st statements, Exhibits P15 and P16 respectively also show the collateral held by you or your assignees on those dates and not collateral received thereafter? 903

A. That is right and if you will bear in mind the date of the assignment of each account that will answer your question.

By Mr. Cohen:

Q. It appears on its face to contain a list of accounts assigned to you prior to the date of its compilation?

A. Yes.

Q. And the other columns indicate the subsequent realization on that collateral?

A. Yes, sir.

904 Q. And therefore each one shows not only the condition of the account on their respective dates, May 16th, July 1st and August 1st but also shows how much you realized on the collateral which you held at that particular time up to November 29th?

A. Yes.

Q. And excluding any payments made to the receivers on these accounts?

A. Yes, sir.

Q. Referring to the question which Mr. Rosenberg asked you, were you ever called upon by any of your banks to take up any of the collateral?

A. Of the Schwab-Kepner Company?

905 Q. Yes.

A. No.

Q. What do you mean by lifting?

A. The remitting of cash to a bank to take up certain collateral at the maturity of it.

Q. Was that act by you at any time done due to anything that the banks did?

A. No.

Q. Was it due to your voluntary act?

A. Yes, and because we forced Schwab-Kepner Company to keep within bounds of the agreement which gave us the cash to do so.

906 Mr. Wolf: We are through with Mr. Dockendorff with the reservation I made before.

Q. Mr. Dockendorff, referring to Exhibit P15, P16 and P17, can you give us the summarized totals of the assigned accounts receivable open on your ledger on the 16th of May, 1910?

A. I can.

Q. What is the amount?

A. $30,377.75.

Q. Have you computed from the account our

rent the balance due you as summarized on the 16th of May, 1910? 907

A. I have.

Q. What is it?

A. $183,117.05.

Q. Have you had summarized the total amount of cash which you received from the debtors on the assigned accounts receivable which were open on the 16th of May, 1910?

A. I have.

Q. And what is that amount?

A. $186,503 of accounts produced $175,797.14 cash.

Q. You have computed the amount of merchandise returned appearing on Exhibit P15? 908

A. I have.

Q. And what is the amount?

A. $50,844.74.

Q. Was any part of that returned to you?

A. Personally, no, sir.

Q. What is the total of those two figures?

A. $226,642.18.

Q. You have computed the total of assigned accounts receivable appearing on Exhibit P16 open in your ledger on the first of July, 1910?

A. I have, the amount is $348,360.98.

Q. Have you computed from the account current which is in evidence the balance due you on advances made by you to the Schwab-Kepner Company? 909

A. I have.

Q. What is the amount?

A. $193,110.91.

Q. Have you computed the amount from the debtors on said assigned accounts receivable and how much does it amount to?

A. I received on $193,117.26 of such accounts the sum of $183,112.32.

Q. And have you computed the amount of re-

910 turned merchandise appearing in said schedule Exhibit P16?

A. I have.

Q. And what is the total?

A. $73,206.39, making a total of both items of $256,648.71.

Q. Describe the condition of the account on August 1st, 1910, as appearing in Exhibit P17.

A. The total of assigned accounts receivable open on my ledger on that day was $340,368.95, the loan balance as shown by the account current was $170,018.80. On $175,118.81 of such accounts open on August 1st, 1910, I received $171,760.69.

911 The merchandise returned appearing from said exhibit amounts to $50,086.82 making a total of $221,847.51. All of these items are taken subject to the qualification that they represent moneys received by me prior to November 29th, 1910, and do not include any collections made by any Receiver or Trustee.

Mr. Rosenberg: These figures which you have given as to Exhibits P15, P16 and P17 and as of the account current are the summaries that you calculated or had calculated in your office?

912 A. Yes, sir.

Mr. Rosenberg: I assume that all of this line of testimony is subject to the original reservation of the right to move to strike out the same as the three exhibits?

Referee: That is understood.

Sworn to before me this 27th day of January, 1911.

Adjourned to Wednesday, February 1st, 1911, at 10:30 A. M.

UNITED STATES DISTRICT COURT, 913

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Alleged Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorf & Company, before Edwin G. Adams, Referee, as Special Master, at No. 165 Broadway, New York City, on Wednesday, February 1st, 1911, at 10:30 A. M. 914

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and JAMES ROSENBERG, Attorneys for Receivers and Creditors.

CYRUS WILLIAMS, recalled:

Examination by Mr. Wolf:

Q. Mr. Williams, you have been testifying about the explanation you made as to the value of the merchandise which the Schwab-Kepner Company owned on or about the first of August, 1910. You testified in answer to Mr. Cohen's question that you assumed that the banks would loan 80% of the value of the goods as per arrangement; will you please state what arrangement you had in mind when you testified? 915

A. I don't think in my testimony that I used the term 80% other than as an illustration. The information I got as to the percentage of value of

916 the merchandise on which loans were made was obtained from Mr. Corbett. That is my best recollection, I may possibly have consulted both with Mr. Kepner and Mr. Corbett.

Q. What did he or they tell you about the percentage which the banks would advance?

Mr. Cohen: I object to that testimony on the ground that it is not binding upon Mr. Dockendorff.

Objection sustained.

Q. Mr. Williams, how did you arrive at an estimation of the value of the goods which the Schwab
917 Kepner Company owned on or about the first of August, 1910?

Mr. Cohen: I object on the ground that it has already been covered on cross and redirect examination.

Master: Question allowed for the present.

Question read.

A. I made inquiries, my recollection is, from Mr. Corbett. I may possibly have made inquiries of both Mr. Corbett and Mr. Kepner.

Mr. Cohen: I move to strike out the answer on the ground that it involves a con-
918 versation not binding upon Mr. Dockendorff.

Motion denied.

Mr. Cohen: May I ask that the witness be given to understand that he should not give conversations unless they are called for by questions in such form that I may object.

Master: The opportunity to object will be given.

(Answer continued): As a result of these inquiries my recollection is that in some cases the banks loaned 80% and in some cases 75%. At this

moment I cannot tell anything better than that. 919
That was approximately the percentage.

Mr. Cohen: I move to strike out the answer on the ground that it is hearsay and no basis for determining the solvency or insolvency of the Schwab-Kepner Company.

Master: The statement beginning "As a result" will be stricken out.

Q. What did Mr. Kepner or Mr. Corbett say to you as to the amount of percentage of the value of the goods that the banks were advancing as against the goods?

Mr. Cohen: I object on the ground that 920
it already appears in the evidence that all this was the basis for an estimate made by Mr. Williams which he communicated to Mr. Dockendorff and with which Mr. Dockendorff did not agree.

Objection overruled.

Question read.

A. In some instances 80% and in others 75%.
Q. 80% and 75% of what?

Mr. Cohen: I assume that my objection runs to all this line of testimony.

Master: Mr. Cohen's object is noted as 921
applying to all this line of testimony and is overruled.

A. 80% of the presumed cost of the merchandise.

Q. And what do you mean by the presumed cost of the merchandise?

A. I don't know that in all cases the Schwab-Kepner Company knew exactly the precise cost. I am using that term as a modifying term.

Q. You mean the estimated cost?

A. No, they put their figures down as to the value.

922 Q. It was an estimation of the cost, their calculation of the cost?

A. Their calculation, yes.

Q. That is what you mean by presumed cost?

A. Yes, sir.

Q. And could they figure out in your estimation what the calculated cost value of the goods was?

A. Yes.

Q. And I think you figured in that way that the actual cost value of the goods on or about August 1st was $286,000 as appear by the notation on the trial balance sheet of July 30th, 1910?

923 Mr. Cohen: I object on the ground that it has already been answered and upon the ground that it is purely speculation.

Objection overruled.

A. I did so testify, but I also qualified that by saying that in my judgment the conditions made it immaterial whether I was within $25,000 of being correct or not.

Q. Now, that estimate of $286,000 as the value of the goods, did that include the goods at the bleacheries, the goods at 66 Leonard Street, goods in warehouse and all the goods of the Schwab-Kepner Company?

924 A. When I arrived at that figure I intended that it should include all the merchandise which the Schwab-Kepner Company held.

Q. Wherever situated?

A. Wherever it might be, but I qualify that as before that it was immaterial in my judgment whether I was within $5,000 or $25,000.

Q. Can you tell us where, about August 1st, 1910 the free merchandise of the Schwab-Kepner Company was located? By free merchandise I mean merchandise not pledged as security for a loan of some kind or an advance of some kind.

A. I can only answer as to my recollection. I 925
don't care to—at this late date I don't care to swear absolutely.

Q. What is your best recollection on that subject?

A. My recollection is that that covered merchandise in their warehouse No. 66 Leonard Street.

Q. Now, did they also have goods free from pledge in their own store?

A. That is No. 66 Leonard Street.

Q. You have testified about a warehouse at 66 Leonard Street.

A. Thatis the warehouse of the Schwab-Kepner 926
Company.

Q. Where is it located upstairs or downstairs?

A. They had some goods loose as the business term is in the salesroom but the case goods were in the basement.

Q. Did they have any goods upstairs?

A. Some always.

Q. But the majority was down in the basement?

A. Yes.

Q. And that is what you call the warehouse?

A. Yes.

Q. You have testified in answer to Mr. Cohen's question that your recollection of the goods in the 927
warehouse at 66 Leonard Street on August 1st, 1910, is that they amounted to $10,000?

A. No, sir. I think if you will read my testimony I said I thought I was within the mark to say it did not exceed $10,000, eliminating such goods as might be there already pledged with the accounts to Dockendorf, but of the free goods, goods not pledged I thought I was covering it by assuming that it was probably $10,000.

Q. Now, can you tell the amount of goods that were in the warehouse which you in your estimation

928 assumed that Dockendorf had a lien against by reason of the fact that the account had been asigned to him?

Mr. Cohen: What do you mean by warehouse now?

Mr. Wolf: The basement.

A. I don't understand that question.

Q. You said you eliminated goods which you understood Dockendorf had a lien against?

A. These goods were only floating, so to speak, only in the course of handling and I have no means now, nor has anyone else of telling at this time
929 what goods were at the date spoken of subject to Dockendorf's lien.

Q. Which gentleman in the Schwab-Kepner Company would be best posted with respect to the free goods in the basement or warehouse?

Mr. Cohen: I object upon the ground that it is not proper recross examination and not brought out by anything in my examination.

Objection sustained.

Q. Did you know at that time that Mr. Dockendorf had an assignment of the equity in the mer-
930 chandise which had been pledged at the bleacheries, or was that assignment of the equity made subsequent to the first of August, 1910?

Mr. Cohen: I object on the ground that it is not proper recross examination.

Question withdrawn.

Q. Do you know when Mr. Dockendorf received the assignment of the equity which the Schwab-Kepner Company has in the goods stored at the bleacheries?

A. I do not.

Mr. Wolf: I call upon Mr. Cohen to pro- 931
duce that assignment.

Q. Did you know at any time that Mr. Dockendorf had an assignment of the equity in the goods at the bleacheries?

Mr. Cohen: I object, immaterial and incompetent and not proper recross examination.

Objection overruled.

A. I had been so informed.

Q. By whom?

A. I can only testify to the best of my recollection. 932

Q. Well, what is your best recollection on that subject.

A. That my predecessor, Mr. Hardy, informed me and it was corroborated afterwards at some time during July by Mr. Dockendorf. I think I made some reference to it which brought out the corroboration. I wouldn't swear absolutely that this is how I got the information, I merely state my recollection.

Q. If your best recollection is that you derived this information from Mr. Hardy, can you state whether or not you obtained it subsequent or prior to August 1st, 1910? 933

A. Mr. Hardy was in the office of the Schwab-Kepner Company during two or three or four days of my first three or four days while I was there so it must have been somewhere during the week beginning July 4th.

Q. Mr. Cohen has asked you about a substitution or concealment or untrue representation made to creditors of the Schwab-Kepner Company and has examined you at great length about that, were you familiar with the financial statement given by the

934 Schwab-Kepner Company to the agencies, mercantile agencies on the first of January, 1910?

A. I was not. I don't think I even saw what purported to be a copy of it.

Q. Had you ever been told what that statement showed by anyone?

A. I don't think I ever had any conversation about it. I have no recollection of it at this date.

Q. Did anyone tell you that such a statement had been made?

Mr. Cohen: I object to that on the ground that it is hearsay and not binding upon Mr. Dockendorf.

935

Objection sustained.

Q. Did anyone tell you anything about any financial statement made by the Schwab-Kepner Company to the agencies, and if so state who it was and when the conversation occurred.

Mr. Cohen: I object on the ground that the question is too general.

Objection overruled.

Mr. Cohen: I object upon the further ground that it calls for conversations which may have taken place after the bankruptcy.

Objection overruled.

936

A. Again I can only testify from my best recollection.

Q. Let us have that.

A. At some time in the early part of my connection, I don't know whether to use employment or not, my connection with the Schwab-Kepner Company, Mr. Kepner informed me that it had been their custom to make a statement to the agencies as of or about January 1st of each year. I don't know what led up to it. At this moment I can't recall.

Q. In other words, your best recollection is that 937
that conversation occurred in July of 1910?

A. I said in the early part, Mr. Wolf. It may have taken place in July.

Q. July or August will you say?

A. It probably did, but I wouldn't swear that it did.

Q. Did Mr. Kepner at that time say anything to you or at any subsequent time about what the surplus of the Schwab-Kepner Company was as appeared by that statement?

A. I don't think that the statement made by the Schwab-Kepner Company as of January 1st, 1910 was ever referred to in figures. I don't recollect 938
that it was.

Q. Was it ever referred to in words?

A. That it had been their custom to make such a statement at such a time.

Q. Was anything said as to whether or not that statement showed a condition of solvency or insolvency?

Mr. Cohen: I object on the ground that it involves the conclusion of the witness and the witness has already stated that the only fact stated was that such a statement was customarily given.

Objection overruled. 939

A. I am certain of one thing and that is that Mr. Kepner never referred to any statement that he ever gave as indicating insolvency to me.

Q. Do you, as an expert credit man, Mr. Williams, understand that a statement given to a mercantile agency is a continuing representation of the condition of the firm making the statement?

Mr. Cohen: I object upon the ground that it involves the expression not of an expert but a legal opinion.

Question withdrawn.

940 Q. Now, in discussing the trial balance sheet of July 30th, 1910, with Mr. Dockendorf, you have given certain answers in the record which may be more or less confusing on the figures. I should like to have you clear them up, Mr. Williams.

A. If you will draw my attention to the matters which appear confusing I will endeavor to make them clear.

Q. Will you please tell us what you said to Mr. Dockendorf respecting the deduction that you made from the outstanding accounts of the Schwab-Kepner Company as appeared on that statement?

941 Mr. Cohen: I object upon the ground that it was fully covered in the original cross examination of the witness.

Question withdrawn.

Q. What was the amount that you told Mr. Dockendorf you deducted from the outstanding accounts of the Schwab-Kepner Company as appears in the trial balance sheet of July 30th?

942 Mr. Cohen: I object upon the ground that it assumes that the witness made an accurate deduction when as a matter of fact all that appears from the record is that he made a hypothetical deduction. If the question makes that appear I shall have no objection.

Objection sustained.

Q. What was the amount that you told Mr. Dockendorff ought to be deducted from the outstanding accounts as shown by the trial balance sheet of July 30th?

A. If you will tell me what you mean by outstanding accounts I will answer.

Q. The indebtedness due to the Schwab-Kepner Company.

A. Including the open account, the notes of Mr.

Kepner and modified as I stated before by my be- 943
lief that it was immaterial so long as I was within $25,000 of the mark, $160,000. I will explain that; roughly $100,000 from the ordinary accounts receivable of the concern and a little over $60,000 of the account and notes of Mr. J. B. Kepner.

Q. You have testified that the $100,000 represented two sorts of accounts—the accounts that were uncollectable by reason of the insolvency of the debtors and secondly the accounts uncollectable because the merchandise which had given rise to the account had been returned and the proper credit had not been passed through the books of the Schwab-Kepner Company. Will you please 944
tell us approximately, according to your best recollection what was the amount of both of these kind of accounts, aggregating the $100,000?

Mr. Cohen: I object on the ground that the first part says that the $100,000 represents certain accounts—the witness has not so testified, he has not testified that it represented anything else except an estimate he made. I object to the framing of questions repeatedly by counsel in that form which tend to give the impression that what was entirely hypothetical was actual fact.

Objection sustained to the form of the 945
question.

Q. What proportion, according to your estimate of the $100,000 of accounts did you deduct because of insolvency of debtors and what proportion did you deduct because of the fact that the merchandise representing the accounts had been returned and the necessary credits not passed through the books and therefore the accounts were non-existent?

Mr. Cohen: I object upon the ground

946 that it assumes the witness made such a deduction and there is nothing in the evidence to show that he did.

Question withdrawn.

Q. What, if any, such deduction did you make?

A. Your question is based upon the assumption that that $100,000 was only two separate items. If I remember my testimony correctly I have nowhere so stated. I stated two principal items but I nowhere intended to convey the idea that this $100,000 was made up only of these two classes. If I did I wish to correct that. My recollection is that I did not.

947 Q. In your estimate of $100,000 what proportion represented accounts where the goods which had created the accounts had been returned by the buyers to the Schwab-Kepner Company and the necessary credits not passed through the books?

Mr. Cohen : I object, immaterial and irrelevant.

Objection overruled.

Mr. Cohen: I respectfully call the witness' attention to the fact that the question calls for an estimation which he made at that time and not one he is making now.

948 A. Which I made August 1st. My recollection of my testimony—

Q. Irrespective of your testimony.

A. There were three distinct elements that went into this $100,000. There were accounts which were not collectable or from which the salvage might be small for various reasons; there were items standing in accounts which ought to have been expunged by reason of no delivery or return of merchandise; there were items standing in accounts represented by goods held at the bleacheries the orders for which had been sent to the

bleacheries but the shipments had not been made at that time. The account would become upon shipment a good account receivable but at the exact date the unfilled orders were figured as part of the inventory of merchandise at the bleacheries. 949

Mr. Cohen: I move to strike out the answer upon the ground that it is not responsive, and my general objection to all of this testimony is that after it is all analyzed it amounts only to the estimate of a credit man who was earnestly desiring to see that his client didn't get in bad, that further elucidation of the processes of his mind is delving into pure hypothesis and adds nothing upon which this Court can find either good faith or lack of good faith on the part of the client. 950

Motion allowed.

Q. Mr. Williams, what proportion of the $100,000 of accounts in your estimation was made up of accounts where the goods had been returned by the debtors to the Schwab-Kepner Company and the necessary credits not passed through the books or non-delivered merchandise?

Mr. Cohen: I object upon the ground that it calls for the present estimation of the witness as well as for his past estimation. 951

Objection overruled.

Master: The question relates to the time of making the estimate, August 1st, approximately.

A. I hesitate to name a figure except that it was a substantial figure.

Q. Was it more than half?

Mr. Cohen: I object to the question as

952 involving merely a guess and speculation. Overruled.

A. I think it was probably less than half.

Q. Now, the remainder of the $100,000 what sort of accounts did that represent?

Mr. Cohen: I object again upon the ground that counsel is now proceeding to get facts instead of estimates.

Q. In the estimate which you made at that time what did the balance represent, what sort of accounts?

953 A. Uncollectable accounts, that is to say those accounts were either insolvent accounts, that is the possibilities of collection in proportion to the total of accounts would be small and in addition to that merchandise billed up but not shipped from the bleacheries.

Q. Did Mr. Dockendorf at the interview you had when the trial balance sheet of July 30th, 1910, was discussed say to you or to Mr. Kepner anything about making up an inventory of the merchandise?

A. I don't recollect, I can't answer yes or no.

Q. Was anything said as to any investigation that should be made of the books of the Schwab-
954 Kepner Company to ascertain as to the fact of what its actual financial condition was?

A. No, not in my hearing.

Q. Now, subsequent to that interview at any other time did you ever hear Mr. Dockendorff say anything about an examination of the books of the Schwab-Kepner Company to ascertain, or the records of the Schwab-Kepner Company to ascertain what its financial condition was?

A. No, I have no recollection of any such suggestion or inquiry made by him.

Q. You testified in answer to Mr. Cohen's ques-

tions about the danger of Mr. Dockendorf's ad- 955
vancing on orders?

A. On orders?

Q. Yes.

Mr. Cohen: I have no recollection of any such testimony.

Q. Where goods were at the bleacheries?

Question withdrawn.

Q. Do you recall Mr. Dockendorf saying to you at any of the interviews or to Mr. Kepner at any of the interviews at which you were present that failure on his part to advance money to the 956
Schwab-Kepner Company would mean its immediate insolvency?

A. No.

Q. Did you ever hear Mr. Kepner say to Mr Dockendorf that if Mr. Dockendorf did not continue to advance money that the Schwab-Kepner Company would be compelled to go into the hands of a Receiver, either that or the substance?

A. No. I think later on that Mr. Kepner made a qualified statement.

Q. When was that according to your best recollection?

A. Oh, that would be, perhaps, as late as the 957
end of September or early in October.

Q. Who said it, Mr. Kepner?

A. My recollection is that it was drawn out in this way. Mr. Dockendorf made some complaint about the amount of his time that was consumed in regard to the Schwab-Kepner Company business and made some remark to this effect; that if he, Mr. Kepner, could place his accounts elsewere he, Mr. Dockendorf, would be glad to have him (Kepner) do it. My recollection is that Mr. Kepner replied to this effect: that of course he (Kepner) understood that if he (Kepner)

958 couldn't replace the financial contract or make similar arrangements elsewhere, he (Kepner) couldn't go on in business.

Q. You testified about making a memo. of an interview that you had with Mr. Dockendorf just prior to Mr. Dockendorf's going to Europe?

Q. On the Monday of the week in which Mr. Dockendorf sailed.

Q. Where is that memo.

A. The last time I saw it it was in my desk at my residence.

Q. Is it still in existence?

A. I think so. I didn't destroy it. At least if
959 I did I did it without intending to do it.

Q. Will you please produce it at the next session?

A. If I am so directed I will.

Q. You were examined at some length, Mr. Williams, with respect to the use made by the Schwab-Kepner Company of the funds received by the Schwab-Kepner Company from Mr. Dockendorf. Is it a fact that the moneys received by the Schwab-Kepner Company from Dockendorf & Company were deposited in the bank account of the Schwab-Kepner Company?

A. Yes, one of several bank accounts.

960 Q. What was then done with the money thus received?

Mr. Cohen: I object upon the ground that it requires an examination of the accounts of the Schwab-Kepner Company and any testimony by this witness as to its disposition will only be a conclusion deduced from these various items.

I will concede that the money was used in the ordinary course of business in the payment of the debts as they matured.

Objection overruled.

Recess taken.

After Recess: 961

CYRUS WILLIAMS, examination continued.

By Mr. Wolf:

Mr. Cohen: Pursuant to the request of the other side we produce agreement between the Schwab-Kepner Company and John E. Dockendorf, dated the 27th day of June, 1910, covering the Frank A. Sales Bleachery, agreement of the same date between the same parties covering the Providence Dying, Bleaching and Calendering Company, agreement dated the same day covering the Standard Bleachery and agreement of the same date covering the Cold Springs Bleaching and Finishing Works. 962

Q. Mr. Williams, you testified at page 22, of the hearing January 13th, 1911, referring to your mental attitude on the question of the solvency or insolvency of the Schwab-Kepner Company, that you must always look for the worst that could happen and you testified subsequently on page 25:

"Q. State whether in making your opinion of the condition of the Schwab-Kepner Company, which you communicated to Mr. Dockendorf, you took a conservative or a liberal attitude toward the assets and liabilities as they were disclosed to you. 963

A. I did not criticise the liabilities; I nowhere recall in my testimony that I gave any criticism of the liabilities; as to the assets, I undoubtedly did state what I believed to be conservative."

How do you reconcile the statement that your estimate of the assets was a conservative one with your statement that with your mental attitude you

964 always had to look at the worst that could happen?

Mr. Cohen: I object to the question unless the next question and answer on page 25 are read to the witness, upon the ground that the entire statement of the witness which he is asked to reconcile with the former statement is incomplete without the next question and answer.

Objection sustained.

Q. You have testified at various times that you always look for the worst that could happen and you further testified that your estimate of the assets
965 as they appeared on the July 30th trial balance was a conservative one?

A. Yes.

Q. How do you reconcile those two statements?

Mr. Cohen: Same objection.

Objection sustained because the witness in his next answer indicates what he means by the term conservative.

Q. In testifying that the opinion that you gave as to the assets of the Schwab-Kepner Company on the 30th of July, 1910, did you give a fair value of the assets?

966

Mr. Cohen: I object on the ground that it already appears that the witness only attempted to make a rough estimate or calculation as a credit man would and it also appears that he made no actual inventory of the merchandise and it would be impossible for him to make any appraisal and upon the further ground that it has not been shown that the witness is qualified to testify as an expert as to the value of the merchandise.

Question withdrawn.

Q In stating to Mr. Dockendorff your opinion of

the condition of the Schwab-Kepner Company did you take a conservative or a liberal view of the assets as they were disclosed to you? 967

Mr. Cohen: I object upon the ground that the question has already been answered.

Objection sustained.

Q. In testifying on page 25 that you stated what you believed to be a conservative figure for the assets, what did you mean by the word conservative?

Mr. Cohen: I object on the ground that it has already been answered.

Overruled. 968

A. When I undertook to criticise the balance sheet of the Schwab-Kepner Company as of July 30th, 1910, I was fully aware of the great responsibility I assumed to all the parties interested in making that criticism. I did not make the scaling down on the basis of finding out what the position would be under liquidation nor did I attempt to put the best possible view of the case forward, I felt that I had to do as any cautious and careful man would, bearing in mind that there might be some action taken in regard to the criticism which he made and the reasons which he gave for the criticism. I may say, therefore, that in speaking of the worst I meant my attitude of mind which directed me to find out whether the figures represented are not a fair estimate or whether they are easily proven as being overvalued and rightfully susceptible of a scaling down. At the same time I did not feel justified in putting the knife in as far as I would have done if I had not been aware of the great responsibility to the Schwab-Kepner Company as well as to Mr. Dockendorf and the creditors as to what I had to say. 969

970 Mr. Cohen: I move to strike out the answer on the ground that it is not responsive.

Mr. Wolf: We object.

Motion denied.

Q. Can you state now, Mr. Williams, whether or not the estimate that you made of the assets, and communicated by you to Mr. Dockendorff, I mean the assets as shown on the trial balance sheet of July 30th, 1910, was in your judgment a fair estimate of the assets of the Schwab-Kepner Company?

971 Mr. Cohen: I object. It asks for the expert opinion of the witness upon facts which are not yet in evidence. We have not had the quantity of merchandise, there has been no inventory and it already appears that the estimate that the witness gave was an estimate based upon the trial balance sheet itself and one or two things outside, but to ask the witness now to give his opinion as to the financial condition of this concern at this time is an attempt to prove solvency or insolvency by a method that is to my mind utterly incompetent. The way to prove solvency or insolvency is to show what the

972 assets were and then put somebody on the stand qualified to tell what a fair value would be, not after this witness has explained an attitude of mind ask him whether his opinion in his opinion is a fair valuation of the assets at that time.

Mr. Wolf: Mr. Cohen entirely overlooks the fact that we have a right to show that Mr. Dockendorf or his agent had reasonable cause to believe this concern insolvent and if he thought that the assets at a fair valuation were less than the liabilities; we have a right to ask Mr. Williams, the same

as we would Mr. Dockendorf, what in your opinion is the fair valuation of the assets at that time. 973

Question withdrawn.

Q. In stating your opinion to Mr. Dockendorf of the condition of the Schwab-Kepner Company as disclosed by the July 30th, 1910 trial balance sheet, did you take a fair value of the assets as they were disclosed to you?

Mr. Cohen: I object upon the ground that the witness has already been examined at length as to that and has answered that he took a conservative view towards the assets and the liabilities and has explained what he meant by a conservative view and to ask him what he means by fair is to substitute his opinion for the opinion of the Court. 974

Objection overruled.

Question read.

A. My desire was to state as near as possible what I believed to be the condition as a going concern.

Q. Have the subsequent developments enabled you to state whether or not the opinions that you formed as to the assets at that time were correct or incorrect? 975

Mr. Cohen: I object on the ground that is an attempt to substitute the judgment of the Master with the judgment of the witness and involves a conclusion of the witness, and is immaterial and irrelevant.

Question reframed.

Q. Has the knowledge that you have acquired since August 1st, 1910, by your continuance in the employ of the Schwab-Kepner Company up to

976 the time of the receivership and the examination you have made of the books and accounts of the Schwab-Kepner Company enabled you to state whether or not your opinion as expressed at that time of the value of the assets was correct?

Mr. Cohen: I object, incompetent, immaterial and irrelevant and not proper recross examination, calls for a conclusion and his decision upon one of the matters submitted to the Master.

977 Master: It does not seem to me that this question is proper but since counsel seems to think that the matter is of so great importance and since the Judges might take a different view of it, I will sustain the objection and allow the answer to go upon the record so that if the Judges should determine that the objection should have been overruled they will have the answer.

Question read.

A. I believe it was correct within the bounds that I stated when I gave my reasons for arriving at the conclusion.

Q. Then on or about August 1st, 1910, was a fair value of the merchandise the sum of $286,-
978 000?

Mr. Cohen: I object upon the ground that it involves the conclusion of the witness and is seeking an expert opinion which the witness has not been shown to be qualified to give, and it already appears affirmatively that he never made an actual inventory of the merchandise.

Question withdrawn.

Q. Then the first of August, 1910, were the total assets of the Schwab-Kepner Company at a fair valuation less than its liabilities?

Mr. Cohen: I object on the ground that 979
it involves a conclusion of the witness and upon the same ground on which I objected to the previous question.

Objection sustained for the reasons given in sustaining the previous objection and the answer will be allowed to be spread upon the record.

Mr. Cohen: I think we have both adopted the rule here of abiding by the Master's decisions subject to review and I see no reason why it should be departed from now. It has been accepted by both sides and it is customarily accepted and it is only in a 980
very few cases that the Special Master is called upon to do this. I have had sufficient confidence in the rulings of the Master to be willing to avoid insisting as I might have that the answer be taken upon the record and the other side has also and I think in a matter of this sort where the Master is of the opinion as appears from the record, that the witness has already testified that he made no actual inventory, that he is not shown to be qualified as an expert, to permit the other side to get a record which contains an expression of such an opinion would 981
seem to me to be unfair and I object to the answer being taken upon the record.

Mr. Rosenberg: I am entirely in accord with what Mr. Cohen says and I do not urge the question except in this respect that I regard it as an important one. I leave it entirely to the Master to exercise his own wish in the matter. If he prefers, having ruled, that the question be unanswered, I shall be content, reserving my exceptions, but I am strongly of the opinion that the

982 question is a competent one and I hope the Master will himself prefer that the question should be answered subject to his ruling.

Master: I will have the answer to this question in the record.

Question read.

A. In my judgment, yes.

Q. You testified, Mr. Williams, on page 26 in answer to the question of Mr. Cohen, as follows:

"Q. Mr. Williams, as a credit man are you accustomed to taking a statement showing assets and liabilities and forming an opin-
983 ion upon the basis of that statement?

A. Unquestionably."

Now, can you state, Mr. Williams, taking the July 30th, 1910, trial balance sheet and examining the assets and liabilities can you give us your opinon as to whether the Schwab-Kepner Company was solvent or insolvent on that date?

Mr. Cohen: I object upon the ground that it involves the conclusion of the witness, upon the further ground that it has already been covered, the witness has given full and definite explanations of the manner in which
984 he came to his opinion with reference to the trial balance and I further object on the ground that it is not proper redirect examination.

Overruled.

The Master: I will hold that it is not cross examination that you are making him your own witness.

Question read.

A. It is difficult for me to segregate the knowledge I obtained in the figures from the knowledge I had outside of the figures. If you want me to

criticize as if I had never been inside their doors— 985
but it is impossible for me to separate the two things.

Q. Mr. Williams, you testified on page 35 in answer to Mr. Cohen's question —

> "Q. In short an account would be sent to Dockendorf as security or as collateral, and subsequently the merchant would return the merchandise for some reason or other because of the careless transaction of the business of the Schwab-Kepner Company, that account would remain apparently an open account while as a matter of fact it was not a real account? 986
>
> A. Correct."

A. There were such transactions, such accounts, yes.

Q. What became of the merchandise thus returned?

A. Re-sold.

Q. And what became of the account created by the re-sale of the returned merchandise?

A. That account also was assigned to Dockendorf.

Q. Without his ever having been notified of the original return thus cancelling the first account? 987

A. Oh, he would get notice. He might not get notice as promptly as he ought but he would get it.

Q. Subsequently?

A. At some time. There were times when he ought to have had it more promptly than he did get it, but he got the notice at sometime.

Q. And your investigations in July, 1910, up to about say August, 1910, showed that there was a very large amount of accounts where he had not at that time received such notice?

A. Yes. Large is a relative term. If it was a

988 loan to the Schwab-Kepner Company of $50,000 it might be large, $50,000 for which credits ought to have been issued would appear extremely large.

Q. What was the amount, approximately?

A. I don't care to state, I am unable to state with satisfaction to myself.

Q. Was it in the neighborhood of $50,000?

A. No, it wasn't that much.

Q. Was it $40,000?

A. I really don't care to pin myself down. It was a substantial amount.

Q. Mr. Williams, you have testified that you knew that Mr. Deckendorf had a transfer to him
989 of all of the outstanding accounts of the Schwab-Kepner Company, that he had a transfer to him as pledgee of the equity of the Schwab-Kepner Company in the merchandise which the Schwab-Kepner Company had at various bleacheries. I ask you now what other assets the Schwab-Kepner Company had which had not been pledged to Deckendorf beyond the small amount of free and unpledged goods which remained in the basement or warehouse as you call it on August 1st, 1910?

A. Substantially everything was pledged both accounts and merchandise.

Q. Beyond the small amount or insignificant
990 amount as you have testified, of free and unpledged goods in the basement or warehouse at 66 Leonard Street what other assets did the Schwab-Kepner Company have on that date not pledged to Mr. Deckendorf?

A. They had some accounts on what was called the purchase ledger accounts which didn't spring out of sales, as to the value of those, one was a large amount but I doubt whether anything could be recovered from it.

Q. What account was that?

A. I think the name was Warren Manufacturing Company. It is in my report there somewhere.

Q. Why is that of no value? 991

A. Practically it is—the asset consists of a law suit, in other words it is a charge for damages not liquidated, damages to be recovered if possible by legal process.

Q. Did the assets not pledged to Deckendorf on that date and beyond the free goods that you testified were in the basement or warehouse at No. 66 Leonard Street have any substantial value?

A. No. Substantial, merchandise is substantial, yes. Do you mean as to amount?

Q. Yes.

A. Oh, as compared—

Q. I mean value in dollars and cents. 992

A. No large amount, no.

Q. Can you tell us what the liabilities of the Schwab-Kepner Company were on the first of August, 1910?

A. I cannot. I could tell what the books show but I cannot tell what the liabilities were.

Q. You knew as shown by the July 30th, 1910, balance sheet?

A. In substance, yes.

Q. Can you tell whether, subsequent to that time the liabilities to the unsecured creditors increased or decreased?

Mr. Cohen: I object, the question involves 993
a conclusion of the witness and calls for his opinion upon facts not in evidence, namely the actual transactions of the Schwab-Kepner Company with the people from whom they purchased goods.

Objection sustained.

Q. Mr. Deckendorf had, as you know, a transfer of the equity of the Schwab-Kepner Company in the goods at the bleacheries, can you tell what the situation was respecting these goods at the bleach-

994 eries with respect to the liens if any existing thereon of the bleacheries and the banks?

Mr. Cohen: I object, it involves the conclusion of the witness and is not proper re-cross examination.

Mr. Cohen: Before recess, your Honor, we were called upon to produce the original agreements between the Schwab-Kepner Company and Mr. Dockendorf in writing relating to these bleacheries. We have produced them and submitted them to the other side and they have had them in their possession all the afternoon and now they proceed
995 to ask this witness for oral testimony when the best evidence is before them.

Objection overruled.

The Master: This relates to August 1st. Whether you knew that on that date.

A. My recollection is that the liens of the banks were stated as collateral loans, that is where they are referred to. The lien on the bleacher goods as to the question of the finishing charges from previous experiences I knew that automatically the finisher had by reason of his custody of the merchandise a lien for any amount which he had at the
996 time against the Schwab-Kepner Company.

Q. Did you know on August 1st or had you been told that the bank had a lien on the goods of the Schwab-Kepner Company at the bleacheries for advances made by the banks?

A. My recollection is that the banks would be interpreted in any event as meaning that.

The Master: That is what you understood on August 1st?

A. Yes.

Four papers produced by Mr. Dockendorf are offered in evidence.

Mr. Cohen: I just want to make this point. 997
The goods at the bleacheries and our lien on the goods at the bleacheries is not before your Honor under the order of reference and so far as the petitioner's case is concerned it is no part of their case to show any of the situation with reference to the goods at the bleacheries. We have nothing that we are unwilling to disclose and we assume of course that the other side can call for almost anything that we have and put it in as part of their case. We think it is utterly out of the order of proof to offer these at this time but with the understanding on the 998
part of your Honor that the matter contained in these contracts is not before your Honor in any shape or manner whatever we make no objection to the admission of these papers.

The Master: I understand that this proceeding relates only to the accounts.

Received in evidence and marked respectively Exhibits B5, B6, B7 and B8, February 1st, 1911. With the understanding that copies may be substituted for the originals.

Q. Mr. Williams, you testified at pages 49 and 50— 999

"Q. In what respect did you say he was jeopardizing his interest?

A. All right, sir. When the accounts and the schedules were sent down to Mr Deckendorf's office, at the same time an order was sent to the bleacheries for the shipment of merchandise. We might say that until the shipment of that merchandise the account had not really ripened into an account receivable. Do I clearly ex-

1000 press myself? And in the event of shipments failing to be made by the bleacheries, why, I thought his position would—might become, not would become, a more hazardous one that at the time we were speaking of."

Now, I call that testimony to your attention and I wish you would please tell me what the method of business was between Mr. Dockendorf and the Schwab-Kepner Company with respect to obtaining the money from Dockendorf and with respect to the shipment of the goods from the bleacheries to create the accounts assigned to
1001 Dockendorff at the time.

A. Goods were billed to the customer and at the same writing sent to Dockendorf. These bills were afterwards schedules and the bill with the accompanying schedules sent to Dockendorf's office. On the day on which these goods were scheduled to Dockendorf the orders were sent if they were not being shipped from the house as happened sometimes, orders were sent to the bleacheries for the shipment of the merchandise. In fact I think the schedules bore a certificate to that effect if I remember correctly. Now, looking forward as a cautious man would to any contin-
1002 gency which might arise by which the bleachery would not have an excess of merchandise and I mean by that they would not have a sufficient amount of merchandise to make good the bank's liens and whatever they might deem safe to hold for themselves if they wanted to hold any and at the same time ship the goods, I could foresee that in that event the condition would be that Mr. Dockendorf had advanced money meanwhile on those accounts that might not ripen into good collateral.

Q. Now, you say that they refer to goods not 1003
shipped from the house as sometimes happened?

A. Yes.

Q. Wasn't it a fact that nearly all of the goods shipped by the Schwab-Kepner Company were shipped from the bleacheries and not from the house?

A. That is very true. A very large percentage were shipped direct. The goods are bulky and to save expense it is not advisable to handle them any more often than is necessary.

Q. In other words the stock the Schwab-Kepner Company held in their warerooms or basement was small and the bulk of their goods were 1004
at the bleacheries?

A. The bulk were at the bleacheries.

Q. From where the shipments were made?

A. That is correct. If there was any quantity of stock in the basement, the warehouse of the Schwab-Kepner Company, any large amount, the bulk of it would be already represented by accounts.

Q. Now, coming back to the method of business for a moment. I wish you would explain that a little clearer and tell us how the money would be obtained from Dockendorf and how the goods would be started from the bleacheries?

1005

A. Well, let me illustrate. Assuming that the Schwab-Kepner Company billed up $8,000 worth of goods on any given day, these bills with the schedules were sent down to Mr. Dockendorf's office. Now, I may say that we have to bear in mind that this is an account as a whole, it wasn't an account of any particular day's business by itself. That same day these orders would go to the bleacheries. Let us assume that an order representing $3,000 went to the Cold Spring Bleachery. Now, the merchandise in the hands of the Cold Spring Bleachery is sufficient to make good

1006 the bank's lien, for them to hold what if anything they deem it proper they should hold for their own security for finishing charges and to ship the $3,000 worth of goods, they were shipped. I don't think that that was always strictly adhered to. They probably delayed shipments at times until the condition of the account warranted shipment.

Q. Now, the money that the Schwab-Kepner Company received from Dockendorf on the accounts which it sent down there on a given day, let us say of $8,000, when would the Schwab-Kepner Company receive the money from Dockendorf, the same day that the accounts were re-
1007 ceived by Dockendorf or a subsequent day?

Mr. Cohen: I object on the ground that it assumes that the money received on that day was received upon the accounts sent down on that day and it already appears in evidence that the loans were made against all of the accounts and when the advances were made on that particular day they were made against all the accounts including overdues and all other accounts and no advances were made on any particular assignment.

Question reframed.

1008

Q. Will you please testify how the accounts were assigned to Mr. Dockendorf and how the money was obtained from Dockendorf by the Schwab-Kepner Company, the course of business with respect thereto?

Mr. Cohen: I object upon the ground that it has already been covered in detail.

Objection overruled.

A. There was an individual assignment of each bill in accordance with the agreement as I understood that agreement.

Q. The assignment would go to Dockendorf? 1009
A. Yes, sir.
Q. When would Dockendorf make payments to the Schwab-Kepner Company before or after he had received the schedule of assignment?

Mr. Cohen: I object on the ground that it already appears in evidence that assignments went down daily and that advances were made almost daily.

Master: I think they are entitled to cross examine fully on that point.

Question read.

A. Why, I should think the answer to that would be, he did both. There were occasions when he made advances before receiving the assignment. 1010
Q. Now, how were the advances by Dockendorf made in point of time as compared with the shipments of the goods by the bleacheries?

Mr. Cohen: I object on the ground that it assumes that the advances were made upon specific accounts from time to time and the testimony and the contracts show that the advances were made on all the accounts then held by Dockendorf as collateral. 1011

Objection sustained.

Q. At the time of the delivery of the schedules to Mr. Dockendorf of the assigned accounts and at the time of the receipt by him of the assigned accounts can you tell what the general situation was with respect to the shipment of the goods creating those accounts by the bleacheries?

Mr. Cohen: I object on the ground that it asks for a general statement covering all situations. If the witness's attention is

1012 called to a specific situation I will make no objection although this is not proper re-cross.

Master: I take it the question is intended to relate to the general course of business and as relating t that I will allow the question.

Mr. Cohen: May I call your Honor's attention to the fact that it already appears that the general conduct of the business was changed from time to time.

A. Mr. Wolf, as I understand your question the
1013 intent is to ascertain what length of time might exist between the assignment of the accounts and the shipment of the merchandise?

Q. The receipt of the assignments by Dockendorf and the shipment of the merchandise.

A. I couldn't answer that, for this reason: Very often orders were sent, letters were written or messages were sent over long distance telephone to hurry certain goods, and orders for which there might not be any great hurry would be delayed so I am unable to state in a general way what length of time elapsed.

Q. What I want is this. In the general course
1014 of business did Dockendorf receive the assignment of the accounts before or after the merchandise had been shipped by the bleacheries?

A. Why in a very large percentage he received the assignment of accounts before the order was received by the bleacheries.

Q. Can you approximate any length of time as a maximum and a minimum amount of time which would elapse after the receipt by Dockendorf of the assignment within which the goods were shipped?

A. From one day upwards. It might be even an hour if done by long distance telephone.

Q. Was that done frequently? 1015

A. Very often.

Q. In the majority of cases?

A. No.

Q. How did they notify the bleacheries in the majority of cases?

A. By mail.

Q. And in those cases what would be the ordinary lapse of time?

A. The shortest time, mailed one day that would reach the bleacheries the next morning early and shipment could be made the same day, that would mean less than twenty-four hours, probably.

Q. Were the accounts ever sent in to the bleach- 1016
eries before they had been delivered to Dockendorf?

A. What was that?

Q. The orders ever sent to the bleacheries before the accounts had been assigned to Dockendorf or before he had received the assignment of accounts?

A. Yes, I think they were, unquestionably in the case of long distance telephone messages, the bleacheries would have the order invariably before the assignment.

Q. As I understand your testimony in a vast majority of instances Dockendorf had received the assignments of accounts before the goods were shipped by the bleacheries? 1017

A. That is correct.

Q. And that might be called the custom of the business or the conduct of the business?

Mr. Cohen: I object; that involves a conclusion.

Q. Would you call that the ordinary conduct of the business?

Mr. Cohen: I object.

Overruled.

1018 A. I don't know how to answer that question, Mr. Wolf. That would assume you see—

Q. It isn't very important, never mind.

A. You have testified, Mr. Williams, that you told Mr. Dockendorf that his position might become more hazardous by reason of the failure of the bleacheries to ship the merchandise when the orders from the Schwab-Kepner Company arrived at the bleacheries?

A. Yes.

Q. Now, with respect to that, what arrangements, if any, did the Schwab-Kepner Company have with the bleacheries about the shipment of
1019 the merchandise?

A. Why, the only arrangement they could have would be that so long as there was a sufficient amount of goods there to make good the liens that would ship any orders in excess.

Q. And if the amount of goods there were not sufficient?

A. That would be within the discretion of the bleachery.

Q. Did it ever occur that the bleacheries declined to ship the merchandise until the account of the Schwab-Kepner Company was put in better shape?

A. It has happened, yes.

1020 Q. And in that situation how would the account of the Schwab-Kepner Company with the bleacheries be put in better shape?

A. By two things, reduce the loan or increase the amount of collateral.

Q. By reducing the loan you mean the Schwab-Kepner Company should make a partial payment?

A. Partial payment, yes.

Q. Or in the event of increasing the collateral it would mean the purchase by Schwab-Kepner Company of new goods to be delivered to the bleachery?

Mr. Cohen: I object, leading.

Objection sustained.

Q. How would the Schwab-Kepner Company in- 1021
crease the collateral?

A. By the shipment of new goods.

Q. How would the new goods be obtained?

A. They might already be at the mills awaiting orders or they might be purchased, just as the case might be. They might be at the mills and purchased on account billed to the Schwab-Kepner Company and held for their order.

Q. Did you ever have any conversation with Mr. Dockendorf on the subject of the bleacheries declining to ship merchandise?

A. Not until a comparatively short while before the failure. You mean as to the possibility or that 1022
they actually had?

Q. As to either.

A. As to the possibility, yes. I have pointed out as already stated.

Q. Did you have any other than the one conversation?

A. I couldn't tell you whether I had or not. I probably did refer to it more than once.

Q. What is your best recollection on that subject, that there was more than one conversation?

A. I think possibly there were, but how many I don't know.

Q. Did you have any conversation with Docken- 1023
dorf with respect to the actual refusal of the bleacheries to ship goods?

A. Yes.

Q. What was said at that time and when was the conversation?

A. The conversation that I have reference to was immediately before the receivership on Mr. Dockendorff's return from Europe.

Q. State what was said?

A. Why, it was merely with reference to a condition that had occurred during his absence.

1030 By the Master:

Q. Did that appear on every one of the schedules?

A. It was intended that it should when they were bleachery goods.

Q. In each instance the schedules were sent there before the order was sent to the bleacheries?

A. No, they were supposed to be mailed that same day and were, I believe. I did not see them mailed but that was the custom and that was the intent.

By Mr. Wolf:

1031 Q. Had you ever had a talk with Mr. Dockendorff about such a conduct of business, such a course of business?

A. Why, I had pointed out what might be a possibility of danger.

Q. Of danger to Mr. Dockendorff?

A. Yes.

Q. When did you do that?

A. Some time in the early part of my employment. I don't remember just the date. I want to say that although I pointed it out I felt that Mr. Dockendorff was quite as well informed as myself regarding it.

1032 Q. So that Mr. Dorkendorff knew it not only from the schedules but also from the information which you had verbally imparted to him?

A. He knew that was the custom of the business.

Sworn to before me this 1st day of February, 1911.

Adjourned to Friday, February 4th, 1911, at 10:30 A. M.

UNITED STATES DISTRICT COURT, 1033

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on petition of John E. Dockendorf & Company before Edwin G. Adams, Referee in Bankruptcy, as Special Master, at No. 165 Broadway, New York City, on Friday, February 3rd, 1911 at 10.30 A. M. 1034

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and JAMES ROSENBERG, Attorneys for Receivers.

CYRUS WILLIAMS, recalled.

Examination by Mr. Rosenberg:

Q. Did you at any time after you became connected with the Schwab-Kepner Company inform any of its creditors of such financial condition as you discovered or believe existed? 1035

Mr. Cohen: I object, incompetent, irrelevant and immaterial and not proper recross examination.

Objection overruled.

Mr. Cohen: I further object on the ground that the question assumes that Mr. Williams was in the employ of the Schwab-Kepner Company.

Objection overruled.

1036 A. Mr. Rosenberg will you please define "any of its creditors?" Do you refer to Mr. Dockendorff or those outside of Mr. Dockendorff?

Q. Outside of Mr. Dockendorff?

A. I may say that I but very rarely came in contact with any creditors and then only casually. I had no conversation with them respecting the company.

Q. Did you ever inform any of the creditors of the company other than Mr. Dockendorff of the financial condition of the company?

Mr. Cohen: I object upon the ground that the question has already been answered.

1037 Objection overruled.

A. I did not.

Q. If you had been asked to extend credit to the Schwab-Kepner Company on August 1st, 1910, would you, as an expert credit man, have extended one dollar of credit with the knowledge of the condition of its affairs which you had on August 1st 1910?

Mr. Cohen: I object; immaterial, incompetent and not proper rectross examination and not one of the issues here.

Objection withdrawn.

1038 Question read.

A. Not unless secured.

Q. When you began your relations with Mr. Dockendorff as to the affairs of the Schwab-Kepner Company did Mr. Hardy inform you that he believed the company was insolvent or anything of that sort?

Mr. Cohen: I object; incompetent, irrelevant and immaterial and not binding upon Mr. Dockendorf and no proper cross examination.

Objection overruled. 1039
Question read.

A. He never used any words indicating insolvency.

Q. Well, in substance, what conversation passed between you and Mr. Hardy on that subject?

Same objection.
Same ruling.

A. It is seven months since so that I can only answer to my best recollection. Mr. Hardy made a remark somewhat of this nature that he was sure that they were not entitled to the surplus shown on their books and it might be that they were not 1040
entitled to their capital.

Q. Did he tell you whether he had told that to Mr. Dockendorff?

Mr. Cohen: I object; incompetent, immaterial and irrelevant, purely hearsay as against Mr. Dockendorff, and no proper cross examination.
Objection sustained.

Q. Did you know from August 1st, 1910, on that the Schwab-Kepner Company was purchasing goods on credit?

A. I did. 1041

Q. Without giving security?

A. Yes.

Q. Did Mr. Dockendorf at any time in your presence or so far as you know ask for additional security in the way of warehouse receipts?

Mr. Cohen: Objected to, not proper re-cross examination.
Objection overruled.

A. I will have to answer that with qualifications. I cannot answer it yes or no.

1042 Q. Answer it any way you want to.

A. I don't know in what way the conversation came about but Mr. Dockendorff claimed and it was admitted that it was his right that where goods were ordered for future delivery and the accounts were assigned to him that the goods should be placed in warehouses until the date of delivery and the receipts given to him in place of the bill of lading or delivery receipt.

Q. Did Mr. Dockendorf, during the last month before the failure at any time so far as you know endeavor to get additional collateral in the shape of new merchandise?

1043 A. New merchandise?

Q. Yes.

A. Mr. Dockendorf never had any merchandise that I know of except as represented in the accounts receivable.

Q. Do you know, Mr. Williams, whether or not creditors who were extending credit to the Schwab-Kepner Company from and after August 1st, 1910, were doing so in reliance upon the statement of financial condition which the Schwab-Kepner Company had made in the January proceeding?

1044 Mr. Cohen: I object; incompetent, irrelevant and immaterial, involving the conclusions of the witness, hearsay evidence not brought out by anything in my direct examination.

Objection sustained.

Q. Did you know whether or not creditors were relying, in giving credit to the Schwab-Kepner Company, after August 1st, 1910 upon the statement of financial condition which that company had made on or about January 1st?

Mr. Cohen: Same objection.

Objection sustained.

Q. Did you ever make any effort to see the January statement? 1045

Mr. Cohen: I object; immaterial and incompetent and not proper cross examination

Objection overruled.

A. Never saw it and never made any effort to see it.

Q. When Mr. Dockendorf first spoke to you about employing you in connection with the Schwab-Kepner Company did he say anything to you about the financial condition of the company?

Mr. Cohen: I object; not proper recross examination and it has already been covered. 1046

Question withdrawn.

Q. According to my notes I have a memorandum that you testified in response to Mr. Cohen's question that at a meeting on or about August 1st at which Mr. Kepner, Mr. Dockendorf and you were discussing the affairs of the company Mr. Kepner said something to the effect that if Mr. Dockendorf would continue he, Kepner, would pull out. Do you recall more specifically the language Mr. Kepner used in that respect?

A. I would like to remove that word discussing I testified that I reported. 1047

Q. At the time when you reported the condition to Mr. Dockendorf, will you state once more in a little more detail what Mr. Kepner said about pulling out if Mr. Dockendorf would help him?

A. My recollection is that in conjunction with the statement I made at the same time I also gave the information as to Mr. Kepner's argument that he had very favorable contracts with the mills for the purchase of goods from which he fully "expected to realize a handsome profit."

1048 Q. In other words, if he made a profit he said he could pull out?

Mr. Cohen: I object; involves a conclusion.

Objection sustained.

By Mr. Wolf:

Q. At the last session you testified that the moneys which the Schwab-Kepner Company received from Mr. Dockendorf were deposited by the Schwab-Kepner Company in one of its several bank accounts, is that correct?

A. I think you misunderstood my answer—I did not mean that all of the money was deposited in
1049 one bank, I mean that the deposits were made from time to time in one of the several accounts which they kept.

Q. Now, after those moneys were deposited in the different bank accounts of the Schwab-Kepner Company how would they be withdrawn from the bank accounts?

Mr. Cohen: I object upon the ground that this witness' testimony is not the best evidence of what became of the moneys, the best evidence is the record of the bank account itself.

1050 Objection withdrawn.

Question read.

A. In two ways, either by checks signed by the President and also by the Treasurer or by notes maturing. I think all those notes matured at the Bank of North America, if not all, substantially all, signed by the same parties.

Q. Now, the first method you say was by checks signed by the President, Mr. Kepner and the Treasurer, Mr. Corbett?

A. That is correct.

Q. Will you explain what you mean by the second method?

A. Let me illustrate. Assuming that the Schwab-Kepner Company gave a note on the first day of August, maturing on the first day of September or the first day of October. It would be payable we will say at the Bank of North America in Philadelphia. When that note was presented to the Bank of North America in Philadelphia at maturity it was charged against the account of the Schwab-Kepner Company and the note retained as a voucher. 1051

Q. Do you know who held those notes?

A. The records will show.

Q. Do you know whether they were held by the general unsecured merchandise creditors? 1052

Mr. Cohen: I object to that, it involves a conclusion of the witness from what must be assumed to be matters of which he hadn't immediate knowledge.

Question reframed.

Q. Do you know what persons or firms held the notes?

A. I do not know who held them, the records show.

Q. To whom were they given?

Mr. Cohen: I object, involves a conclusion. 1053

Objection sustained.

Q. After August 1st, 1910, can you tell us approximately the amount of notes thus paid by the Schwab-Kepner Company?

Mr. Cohen: Objected to; involves the conclusion of the witness and not the best evidence.

Objection sustained.

Q. Have you made any investigation of the books of the Schwab-Kepner Company sufficiently to en-

1054 able you to tell us the amount of notes thus paid?

A. I have not.

Q. Did you receive information at the time the different notes were paid?

Referee: Of the payment of them do you mean?

Mr. Wolf: Yes.

A. I think that it was customary for Mr. Kepner to advise the bank before the maturity date that such and such a note or notes would be presented for payment and to pay them. That is all I recall. I have no recollection of having any other advice
1055 as to payment. There may have been but I don't recall it at this moment.

Q. What use was made by the Schwab-Kepner Company of the funds withdrawn from the banks by its checks?

Mr. Cohen: Objected to upon the ground that it is not the best evidence, involves a conclusion of the witness.

Question reframed.

Q. To what uses were the funds of the Schwab-Kepner Company in the banks put by the Schwab-Kepner Company after August 1st, 1910, if you
1056 know.

Mr. Cohen: Same objection.

Objection sustained.

Q. In the course of the performance of your duties at the Schwab-Kepner Company were you advised or told by any one and if so by whom, what use was made of the funds which the Schwab-Kepner Company had in the banks?

Mr. Cohen: Does the question call for general use or specific use?

Mr. Wolf: General course of business.

A. Part of my duties consisted in scanning the 1057
outlay made from time to time. With the exceptions which I recited on a former occasion the moneys were devoted to the payment of liabilities.

Q. Now, as part of your duties with the Schwab-Kepner Company you were advised and kept posted of the use made by the Schwab-Kepner Company of the moneys which it had, is that correct?

A. I had access to the check book and to the cash book.

Q. And were you familiar with the use made by the Schwab-Kepner Company of the funds which it had to its credit?

A. In a general way, yes. 1058

Q. Now, will you please tell us, in a general way, what use was made of the funds which the Schwab-Kepner Company had to its credit after August 1st, 1910?

A. With the exception of those few items which I recited on a former occasion they were used in payment of general liabilities of the business, and expenses.

Q. Which exceptions do you refer to?

Mr. Cohen: I object on the ground that it has already been covered in detail by the witness.

1059

Q. Can't you answer in a few words what exceptions you refer to?

Mr. Cohen: I object upon the ground that it has been previously covered in detail.

Objection sustained.

Q. Can you tell us what liabilities you refer to as being thus paid by the Schwab-Kepner Company with respect to the liabilities being due at the time of payment or thereafter to become due?

1060 Mr. Cohen: I object, involves the conclusion of the witness.

Objection overruled.

Mr. Cohen: I further object on the ground that the witness has already answered it in detail at previous hearings.

Objection overruled.

Question read.

A. I refer to matured obligations.

Q. Had they matured at the time of payment and the maturity date passed or were they paid at maturity or had the maturity date not yet arrived?

1061 Mr. Cohen: I object, already covered

Overruled.

A. You want a general answer, nothing specific?

Q. General answer.

A. In the case of notes the maturity date of the notes; in the case of open accounts sometimes at maturity and sometimes a short time after.

Q. Can you tell from what firms the Schwab-Kepner Company, after August 1st, 1910, continued to purchase new merchandise from as compared with the firms with which it had theretofore done business?

1062 Mr. Cohen: Objected to. Not proper recross examination and involving a conclusion of the witness from data which should be produced.

Objection sustained.

Q. Can you tell whether or not the Schwab-Kepner Company after August 1st, 1910, continued to purchase new merchandise from the firms whose obligations it was paying?

A. General answer?

Q. Yes.

A. I believe so.

Q. And what would be done with this new mer- 1063
chandise?

A. I could only answer that in a general way.

Q. That is what I want.

A. A good deal of it was sent to the bleacheries to be finished and upon finishing sold. Some of it was sold in what is termed, a cotton goods term, in the gray.

Q. Do you recall any conversation between Mr Dockendorf and yourself and any other person subsequent to August 1st, 1910, in which Mr. Dockendorf said in words or in substance to any representative of the Schwab-Kepner Company or spoke to him about purchasing new merchandise 1064
and the selling of the same?

A. I am afraid I can't answer that question.

Question read.

A. With all due respect to you, Mr. Wolf, I cannot answer that.

Q. Do you recall any conversation with or discussion between Mr. Dockendorf and any representative of the Schwab-Kepner Company about the purchasing of new merchandise?

Mr. Cohen: You mean of course at which Mr. Williams was present?

Mr. Wolf: I asked if he knew of any 1065
such conversation.

Mr. Cohen: I object unless it refers to a conversation at which he was present.

Master: It must of necessity relate to a conversation at which he was present.

Objection overruled.

A. I will have to say that I can only answer that generally. My recollection is that Mr. Kepner on more than one occasion, how many I do not know, made the statement that his credit with the mills

1066 was unimpaired. I wouldn't say that he used those words but that was the meaning of them.

Q. Do you recall any conversation subsequent to August 1st, 1910, in which Mr. Dockendorf said to any representative of the Schwab-Kepner Company in words or in substance that the Schwab-Kepner Company should purchase a large quantity of merchandise and sell the same?

A. I don't recall any such conversation.

Q. Twenty thousand dollars worth of merchandise?

A. I don't recall that Mr. Dockendorf at any time mentioned any sum for purchase. That was a
1067 matter within the discretion of the Schwab-Kepner Company.

Q. Do you recall any conversation in which Mr. Dockendorf said to Mr. Kepner that Mr. Kepner on behalf of the Schwab-Kepner Company should purchase merchandise and sell the same?

A. I really can't answer that Mr. Wolf. If you are more specific it may prod my memory but at this moment I don't know how to answer.

Q. Do you recall any conversation that occurred between Mr. Dockendorf and Mr. Kepner within the month prior to the receivership or thereabouts at which Mr. Dockendorf told Mr. Kepner that he
1068 wasn't buying enough goods at the bleacheries and that Mr. Kepner should go ahead and buy more goods at the bleacheries and sell the goods and transfer the outstanding amounts to him?

A. Mr. Dockendorf was away from, I don't recall what length of time—

Mr. Cohen: You can answer that question by yes or no.

Question read.

A. I don't remember any conversation of that tenor.

Q. At any time after August 1st, 1910, do you re- 1069
member such a conversation occurring?

A. I must say I do not.

Q. Can you give us any conversation that you recall that occurred between Mr. Dockendorf and Mr. Kepner subsequent to August 1st, 1910, at which you were present and at which the subject of the purchase and sale of merchandise by the Schwab-Kepner Company were discussed?

A. Mr. Wolf, I can't answer that except generally. Mr. Kepner asserted repeatedly that his credit was unimpaired and there was no reason why with the assistance which Mr. Dockendorf seemed willing to grant him that he shouldn't go 1070
on.

Q. What did Mr. Dockendorf say to that?

A. I can only answer in a general way.

Q. Give us that.

A. He seemed willing to do so.

Q. Can you tell us the substance of what he said to Mr. Kepner?

A. I know the made the assertion to me but whether it was in Mr. Kepner's presence or not I don't recall.

Q. What did he say to you?

A. He made an assertion to me probably in answer to some remark of mine, I don't know about 1071
that now, that he didn't see any reason why with the assistance that he was able and willing to accord them, why they shouldn't continue.

Q. And did Mr. Kepner say to Mr. Dockendorf at any of these interviews how he was to continue, what he meant by continuing in business?

A. Just Mr. Kepner's own expression of his belief that the profits which he would realize during the coming season would relieve the financial strain.

Q. Did he say whether or not continuing, as he

1072 called it, in business meant the purchasing of new merchandise?

Mr. Cohen: I object upon the ground that the question has already been answered and further upon the ground that it is leading?

Objection overruled.

A. I don't know whether I am answering from what I heard or from what I assumed. Their business was the buying and selling of merchandise and continuing in business of necessity meant the buying and selling of merchandise.

1073 Re-redirect examination by Mr. Cohen:

Q. In order to understand the relationship of these various situations to each other will you please tell us in a general way the nature of the business that the Schwab-Kepner Company conducted?

Mr. Wolf: I object, not proper re-redirect examination, is too general and is going over testimony already thrashed out *ad infinitum*.

Objection overruled.

1074 A. The Schwab-Kepner Company carried on a business which is generally known under the trade term converters of cotton goods.

Q. And what does it mean told to the layman?

A. That means they take the mill product in gray cloth, send it to the bleacheries to be finished insofar as the market demands call for it and upon its being finished sell the goods.

Q. To what class of merchants do they sell the goods?

A. Not only to jobbers who re-sell but to merchants generally.

Q. From what class of people do they buy? 1075

A. The bulk of it from mills who manufacture the gray cloth.

Q. In order to get such goods do orders have to be placed in advance?

A. Not always.

Q. Did you become aware when you went to the Schwab-Kepner Company that they had what Mr. Kepner referred to as contracts with the mills for future delivery?

Mr. Wolf: I object upon the ground that it calls for the conclusion of the witness and is not the best evidence.

Master: I will permit him to testify as to the general conduct. 1076

Objection overruled.

A. It was no part of my duty to examine the contracts. Such as I may have seen I came across accidentally or because of some specific incident that brought it up, but as to the contracts I know that it is customary that such contracts shall be made by parties engaged in that business and I have no knowledge as to the amount and with whom, only that in a general way Mr. Kepner stated that he had valuable contracts.

By the Master: 1077

Q. The question was when you went there whether they had contracts for future delivery?

A. Speaking generally from hearsay.

Q. You mean from what Mr. Kepner told you?

A. Yes, sir and as referred to by Mr. Corbett and Mr. Victor.

By Mr. Cohen:

Q. Before you had the conversation with Mr. Dockendorff in which you expressed your opinion as to the condition of the Schwab-Kepner Com-

1078 pany affairs did you make any investigation to ascertain how many of these contracts there were or how much they amounted to?

A. I did not.

Q. So that at the time of this conversation you did not know, yourself, whether they were profitable or unprofitable?

Mr. Wolf: I object, calls for the conclusion of the witness. The contracts would show what the price of the goods were as compared with the market price and further objection is made upon the ground that this witness is not an expert on that question.

1079 *Objection overruled.*

Master: Can you answer that question yes or no?

A. Actual knowledge, no.

Q. Now, did you mean to testify, Mr. Williams, that the only pledgee of merchandise or accounts was Mr. Dorkenhoff during the period that you were there?

A. Of merchandise and accounts?

Q. Yes.

A. No, I did not.

Q. Now, it is the fact, is it not, that when you 1080 *came there you found that there were other creditors who were lending money on security besides Mr. Dorkenhoff?*

A. I so stated in my testimony.

Q. Now, in a general way, who were the creditors, were they the banks?

A. The banks, yes.

Q. And in addition to that you have testified that money was advanced to the Schwab-Kepner Company upon merchandise at the bleacheries?

A. They are one and the same thing with one exception that the Bank of North America loaned

money on goods in warehouses. Outside of that the 1081
loans were on merchandise at the bleacheries.

Q. That is to say the bank loans were loans on the merchandise at the bleacheries with the exception of the Bank of North America which also loaned on goods at the bleacheries and in the warehouse?

A. That is correct.

Q. And for goods in the warehouse they received warehouse receipts?

A. I was so informed.

Q. Now, the only warehouse receipts you testified Mr. Dockendorff received were the warehouse receipts covering goods to be shipped in future, the 1082
accounts for which were transferred to him?

A. I believe that to be the case.

Q. Now, when you referred to the goods on hand at any time do you mean to refer to those goods that were not pledged under warehouse receipts and not pledged at the bleacheries?

A. That is what I referred to.

Q. And when you refer to floating goods you refer, do you not, to goods that were at the Leonard Street place about to be shipped to carry out the accounts which had been assigned to Dockendorff?

A. Not entirely.

Q. What else do you mean? 1083

A. Goods were sometimes in the Leonard Street place for delivery and sometimes to be placed in warehouses against future delivery.

Q. Did you ever make any careful investigation into the general sales that the Schwab-Kepner Company were making after you went there that enabled you to determine whether or not they were selling goods generally at a profit or a loss? You can answer that yes or no.

Mr. Wolf: I object to that as having been gone over and not proper re-redirect.

Objection overruled.

1084 A. I can't answer that question.

Q. Did you make any investigation or any examination of the books for the purpose of determining from day to day whether goods were being sold at a profit or a loss?

A. On the 10th day of August I undertook the duty of checking the credits and approving of the sales as to the financial condition of the parties to whom they were selling the goods. The orders all came to my desk for approval and always showed the price and the amount of the sale and I think I may say as a general condition contained also—I won't say always, contained also a memorandum as
1085 to the amount which was to be stricken from the bleachery collateral account or from the warehouse collateral account. My observation from those figures in a general sense, speaking in a general sense, is that they were selling goods without a profit.

Mr. Cohen: I move to strike out the answer as not responsive.

Mr. Wolf: I object to the striking out of the answer.

Motion allowed.

Question read.

A. Mr. Referee, with every desire to fulfill the
1086 injunction to answer the question with yes or no I do not see how I can make any other answer than I have already made.

Q. Do you recall being asked by Mr. Wolf this question and giving this answer on your cross examination:

"Q. Could you tell by an examination of the books whether or not the Schwab-Kepner Company was making sales with or without a profit? A. The only way I could do that would be to take the invoices and look up the bill numbers and try to estab-

lish the corresponding sales and in that way 1087
I would have to know, which I don't, what it cost to finish these goods. Q. Did you ever make any such tests? A. No."

A. That is correct.

Q. How does it happen that when I ask you whether or not you made any investigation as to these facts you say you can't answer the question yes or no?

A. I still stick to that answer.

Q. Do you recall in a general way the form of the checks that came from Mr. Dockendorff to the Schwab-Kepner Company?

A. I don't know what you mean. 1088

Q. They were drawn on some bank to the order of the Schwab-Kepner Company?

A. They were.

Q. Signed by Mr. Dockendorf?

A. Yes.

Q. And they were deposited, as you say, in the bank account or accounts of the Schwab-Kepner Company?

A. That is correct.

Q. And disclosed on their face the sources from which they came, or the source from which they came?

1089

Mr. Wolf: You mean they were signed by Dockendorf?

Q. Disclosed that they came from Dockendorff?

A. Yes.

Mr. Wolf: You mean they were signed by Mr. Dockendorf?

Mr. Cohen: That is what I mean, yes.

Q. You have already testified that the remittance that came from customers were sent to Mr. Dock.

1090 endorf, were the checks sent direct to Mr. Dockendorf without deposit in any bank?

Mr. Wolf: I object to that on the ground that it has been gone over not once but half a dozen times.

Question withdrawn.

Q. In answer to one of Mr. Wolf's last questions you said that a commission house could not do business without buying and selling goods?

A. I said converters of cotton goods. I have no recollection that I used the word commission house.

1091 Q. Well, you may be correct, my notes are commission house. At all events you meant converters of cotton?

A. Yes.

Q. Did you have in mind when you were stating that that cotton converters have to take orders for future deliveries and have to give orders for future delivery to the mills?

A. Unquestionably, at times, not always.

Q. Now, as a credit man, in your experience would you say that there was any period of time, any day when a cotton converting house is without contract for future delivery with its customers

1092 and without contracts for future delivery with its mills?

A. I think that would be unlikely.

Q. So that if a concern stopped business suddenly it would be almost inevitable that it would have unperformed contracts with its customers and with its mills?

Mr. Wolf: I object to that as calling for a conclusion and not for a fact, for a legal opinion and not a statement of facts.

Mr. Cohen: I am asking for the general

conditions of business in the cotton convert- 1093
ing line.

Master: I think that follows from the previous question and answer.

Question withdrawn.

Q. You answered Mr. Wolf in reference to use generally of the funds of the Schwab-Kepner Company that they were used in payment of the liabilities of the notes maturing at the bank and payment of merchandise creditors as their bills matured, and in further answer to Mr. Wolf's question you said that the payments to the banks were made on the day the notes matured while payments of the merchandise accounts were made either on 1094
the day they matured or a short time thereafter. What do you mean by a short time thereafter?

A. I can't make it any more specific than that. I don't recall how many days.

Q. Now, Mr. Williams, is this a correct statement of the manner in which the business was generally conducted: the source of goods was the mills; the sales were of goods after they had left the bleacheries. I mean the deliveries after they had left the bleacheries; the goods were shipped from the mills, in the main, to the bleacheries there to be changed into the character of goods required to fill orders; that the orders were, in the main, filled at the 1095
bleacheries; that cash or money was borrowed by the Schwab-Kepner Company on its notes from the banks, secured by merchandise at the bleacheries and in the case of the Bank of North America, in the warehouse; they borrowed money from Mr. Dockendorff on the accounts receivable and the goods covered by the accounts receivable pledged as security; that as moneys were received from Mr. Dockendorff they were deposited in the bank and went to pay for the merchandise which had been purchased, the notes as they matured at the banks

1096 and for general expenses of the business and that as the remittances came in from the customers for the goods they were turned over to Mr. Dockendorff; that the bleacheries had a more or less definite understanding as to the amount of equity which would be left at the bleacheries; that from time to time merchandise was shipped from the mills to the bleacheries daily; that the bleacheries honored the orders of the Schwab-Kepner Company to ship goods in fulfillment of orders received from Schwab-Kepner Company so long as the equity determined upon by the bleacheries was maintained; that the accounts receivable were from day to day
1097 transmitted to Mr. Dockendorff; that from day to day he made advances; that where the goods were for future delivery they were sometimes sent to the storage warehouses and the warehouse receipts were turned over to Mr. Dockendorff and held by him until bills of lading were substituted by the shipment of the goods to the customers; that where the goods were to be shipped from the bleacheries he received information to the effect that orders had been sent to the bleacheries. Now, in a general way, is that the course of business conducted by the Schwab-Kepner Company?

1098 Mr. Wolf: I object to that as being an improper question on re-redirect examination. It is a summing up of the entire case with parts of the record used for the framing of the question. It is not in entire accord with the record. I object principally on the ground that it is a summing up of the case which it seems to me on re-redirect is improper.

Mr. Cohen: I submit, sir, that I am entitled to connect the various parts of this business that Mr. Wolf has submitted to the Court and readjust them so that your

Honor may see the machinery complete and not in its separate parts. The witness has already shown that he possesses caution, intelligence and an understanding of the English language, and he has shown that he has followed this question very carefully; if there is anything in the question omitted or misstated, I think the Master may reasonably assume that the witness will call attention to it. It is not a summing up of the case but it is showing what was not shown before that the cart was not before the horse, but that the horse was in front of the cart and there was a routine of doing business which my friend has been trying to invert. 1099 1100

Recess Taken.

After Recess.

After argument on the objection which was before the Master when recess was taken ruling on the objection was suspended.

CYRUS WILLIAMS, examination continued. 1101

By Mr. Cohen:

Q. Mr. Williams, considering the business in its chronological order and taking the goods from the beginning to the end, it came from the mills, isn't that the fact?

Mr. Rosenberg: I object to the question on the ground that it is leading and upon the further ground that it is repetition.

Mr. Cohen: I ask for leave to ask this witness leading questions as to the order of business and the general method of doing

1102 business upon the ground that counsel for the other side has made this witness his witness for the purpose of maintaining their affirmative case and I have the right to cross examine this witness on the method of doing business and I ask this permission for the purpose of contradicting the charges that have been made in this proceeding.

Master: I think counsel should first attempt to elicit this information by questions that are not leading and if he finds that he cannot without leading the witness I will then consider whether you can be allowed to
1103 lead him, after hearing the witness's replies to the questions.

Q. Mr. Williams, taking the goods that went to the customers of the Schwab-Kepner Company in point of time where were those goods before they were shipped to the customers?

Mr. Rosenberg: I object on the ground that the question has already been answered.

Objection overruled.

A. They might be at the mills, they might be at the bleacheries, they might be in storage warehouses subject to the warehouse receipts in the hands of
1104 either Mr. Dockendorff or the Bank of North America, or they might possibly be immediately before the shipment in the basement of the Schwab-Kepner Company.

Q. Now, you have already testified, have you not, that the goods in the bleacheries were subject to the liens of the banks for the advances which they had made?

A. Yes.

Q. And you have already testified that those goods would not be shipped to the customers until that lien was in some way satisfied?

A. I do not remember that I testified exactly in

that way. I have testified that in the discretion of 1105
the bleacheries, if the bleacheries might see fit to make shipments without being fully covered, either themselves or the banks at some times, that was a question for them to decide.

Master: Ordinarily?

A. Ordinarily they would hold sufficient to protect the lien of the banks.

Q. In order that these goods might be released by the bleacheries for the shipment to the customers by a reduction of the loan how would that reduction be made?

Mr. Rosenberg: Objected to on the ground 1106
that it assumes a state of facts contrary to what has been proven as it has been proven that the goods could be released by the addition of new merchandise and were generally so released.

Objection overruled.

A. By payment by the Schwab-Kepner Company to the bank holding the lien.

Q. Now, was the bleachery under any contract, so far as you know, with the bank, to hold sufficient quantity of goods at the bleachery to secure the loan of the bank?

1107

A. I so understood.

Q. And so unless the bank as pledgee of the merchandise released the bleachery the bleachery would not ship the goods?

Mr. Wolf: I object on the ground that it calls for an interpretation of the contracts that existed and the contracts are the best evidence.

Objection sustained.

Q. What, so far as you know, was the method by which the bleacheries received information from

1108 the banks that the bank had been satisfied sufficiently upon its lien to enable the bleacheries to ship any particular goods in pursuance to the orders of the Schwab-Kepner Company?

A. I cannot tell as between the banks and the bleacheries. I do not know.

Q. You have some understanding of their method of doing business, have you not?

A. I assumed from the experience I gained there.

Q. You have just as much understanding of that as you have of the other things you have testified to here as to the manner of doing business, have you not?

1109

Mr. Wolf: I object to the question as improper, not calling for any facts and being too general, not proper re-redirect.

Objection overruled.

A. I can assume from the practice—

Master: Just answer the question.

A. No. I can't tell in that there were some things of which I had positive knowledge and some things I had knowledge of by experience. This was a case where I did not have positive knowledge.

Q. You knew there was some method of communi-
1110 cation between the banks and the bleacheries or the goods would not be shipped, did you not?

Mr. Wolf: I object on the ground that it is an improper question.

Objection sustained.

Master: After the loan of the bank had been reduced was it customary for the bleachery to then ship some of the goods?

A. Yes.

Q. Now, you have already testified, have you not, Mr. Williams, that the moneys received by Schwab-Kepner Company, the checks received from Mr.

Dockendorff were deposited in the banks and you 1111
have already testified that some part of that money was used in reduction of the loans by the banks to the Schwab-Kepner Company?

A. I have.

Q. Did you mean by that to refer to some of the loans on the merchandise situate at the bleacheries?

A. I meant to cover that and also some small loans made without security to the Schwab-Kepner Company.

Q. So that it is the fact, is it not, Mr. Williams, that part, at least, of the moneys which Dockendorff advanced to the Schwab-Kepner Company was used in reduction of the liens which the banks 1112
held upon the goods at the bleacheries?

A. That is unquestionably true.

Q. And when Mr. Dockendorf received the accounts receivable resulting from the shipment of the goods at the bleacheries to the customers he was receiving goods which had been released in those cases by the reduction of the lien to the extent of the use of the money which he had advanced to the Schwab-Kepner Company at that time?

Mr. Rosenberg: Objected to on the ground that it assumes that the accounts Mr. Dockendorf received were for goods shipped, whereas the testimony shows that the ac- 1113
counts were received first and that afterwards the goods were shipped so that what was called an account had not ripened into an account; further, it is objected to on the ground that it is leading, that it seeks to sum up testimony and is argumentative. Particularly objectionable on the ground that it assumes a course of business that did not occur.

Mr. Cohen: Counsel has allowed his imagination to run away with his understanding

1114 of the transactions. Counsel assumes for the purposes of his argument that every advance made by Dockendorf on an account receivable where the goods had not yet been shipped from the mills was an advance made solely upon that account and evidently has forgotten the fact that it was made not only upon the accounts brought down that particular day but upon the accounts brought down the day before and the day before that, so that as fast as the accounts were made good by the shipment of the goods, Dockendorf's security for the money he had ad-
1115 vanced yesterday became good and he advanced his money today not on the strength of the security sent down today but of the security sent down yesterday and the day before that in anticipation that the security sent down today would be made good and tomorrow the same thing would follow.

I will modify my question.

Q. Taking any account then, Mr. Williams, that came down on any particular day to Dockendorf that account receivable ripened into good security by the shipment of the merchandise from the
1116 bleachery to the customer against whom the account was charged?

Mr. Rosenberg: Objected to upon Mr. Cohen's statement, he is stating that it ripened into good security which calls for a complicated conclusion of the witness and is leading.

Objection sustained.

Q. So that, Mr. Williams, when an account receivable was sent down to Mr. Dockendorf and subsequently the goods referred to in that account receivable were shipped from the bleachery that ac-

count receivable became part of the security upon 1117
which Dockendorf made his advances?

Mr. Rosenberg: Objected to, it calls for the opinion of the witness as to the legal effect of the transaction between the parties.

Objection sustained.

Q. Now, Mr. Williams, take any particular day, say $1,000 worth of accounts are sent down to Dockendorf covering $1,000 worth of goods to be shipped from the bleachery and on that particular day Dockendorf advances to the Schwab-Kepner Company $800 and that $800 is deposited in the bank holding the goods at the bleachery as security 1118
for the loan. If that $800 is applied at the bank to the reduction of the loan thus permitting the goods to be released from the bleachery, the effect would be that Dockendorf's account was made good by reason of the fact that the money which he advanced was used in reduction of the lien against the goods in the bleachery. Was not that the result of the daily transaction?

Mr. Rosenberg: Objected to on the ground that it calls for the conclusion of the witness as to the results which follow the transaction. Also objected to on the ground that it is argumentative. 1119

Objection sustained.

Q. Now, what would ordinarily happen, Mr. Williams, if the loans of the bank for which the goods at the bleacheries were held as security were not paid for as they matured?

Mr. Rosenberg: I object to what would ordinarily happen. I have no objection to what did happen.

Mr. Cohen: I am talking about the gen-

1120 eral conduct of the business, concerning which he is an expert.

Objection overruled.

Question read.

A. If the bank considered their collateral good and perfectly safe they would probably renew the loans.

Q. If they did not?

A. If they did not I can't say what would happen.

Q. Would the goods be shipped from the bleachery?

A. No.

1121 Q. So that it is true, Mr. Williams, in the conduct of this business here, if the loans of the banks which were secured by pledges of the merchandise at the bleacheries were not met as they matured the goods could not be shipped out of the bleacheries to the customers of the Schwab-Kepner Company and the accounts receivable would never exist for those goods?

Mr. Rosenberg: Objected to, calls for this witness's guess as to what these banks would do and does not call his attention to the various things that the banks would have a

1122 right to do and it attempts to sum up without giving all the facts a certain branch of the course of business, and is leading.

Mr. Wolf: Objected to for the further reason that it does not state that the banks would release the goods if the collateral were made sufficient or the margin maintained by payment of part of the debt or the substitution of collateral.

Objection sustained.

Q. At page 32, "Mr. Williams you have testified that you knew that Mr. Dockendorf had a transfer

to him of all the outstanding accounts of the Schwab-Kepner Company, that he had a transfer to him as pledgee of the equity of the Schwab-Kepner Company in the merchandise which the Schwab-Kepner Company had at various bleacheries. I ask you now what other assets the Schwab-Kepner Company had which had not been pledged to Deckendorf beyond the small amount of free and unpledged goods which remained in the basement or warehouse as you call it on August 1st, 1910." 1123

"A. Substantially everything was pledged both accounts and merchandise."

Did you mean by that answer that everything was pledged to Deckendorf? 1124

A. I did not.

Q. Did you include in your answer the pledge of merchandise and goods in warehouses to the banks?

A. I certainly did.

Q. Now, in point of time was the pledge of the banks prior to the pledge of Deckendorf? I mean by that were the goods at the bleacheries pledged to the banks before the accounts for the sale of these goods were pledged to Deckendorf?

A. Unquestionably.

Q. So that it is true that the lien of the banks was ahead of any lien that Deckendorf had? 1125

A. Unquestionably.

Q. Now, Mr. Williams, you testified on pages 37 and 38 of the last hearing in answer to question put by Mr. Wolf, "Now, looking forward as a cautious man would to any contingency which might arise by which the bleachery would not have an excess of merchandise and I mean by that they would not have a sufficient amount of merchandise to make good the bank's lien and whatever they might deem safe to hold for themselves if they wanted to hold any and at the same time ship the goods, I could foresee that in that event the condition would be

1127 that Mr. Dockendorf had advanced money meanwhile on those accounts that might not ripen into good collateral." Now did that situation ever arise, as a fact?

A. That situation did arise.

Q. And did it not arise within a short time prior to the bankruptcy?

A. It came about the end of October.

Master: You mean that is the first time it arose?

Q. What I am referring to is, wasn't there a time when a very substantial amount of accounts
1128 receivable which would have been good collateral if the goods had been shipped from the bleachery was cancelled, to use the expression used in the business, by reason of the fact that the goods were not shipped to the customers?

A. That is true.

Q. What was that amount?

A. Approximately $120,000 or $125,000.

Q. That meant that accounts receivable which Dockendorf had received expecting that the goods would be shipped by the bleacheries were not made good by the actual shipment of the goods from the bleacheries?

1128 A. Yes.

Q. Now, taking that $125,000, do you know of any security of any kind or character which Dockendorf got from the Schwab-Kepner Company in place of that $125,000?

A. I do not.

Q. And that happened a short time before the bankruptcy?

A. About the end of October.

Q. And that resulted in the depletion of Mr. Dockendorf's security to that extent?

Mr. Rosenberg: I object to the word deple-

tion as implying that the security had existed, whereas the fact is that the transfer of what was called an account receivable was not the transfer of any security or collateral whatever because it did not represent any debt whatever. 1129

Objection sustained.

Q. Now, Mr. Williams, isn't it a fact that of that $120,000, approximately $60,000 was actually shipped and the bills of lading came down to the Schwab-Kepner Company office for those goods from the bleacheries?

A. I don't know the amount. I never knew the exact amount, but a substantial amount of merchandise was shipped, a very substantial amount. 1130

Q. Of that $120,000?

A. Yes, of that $120,000.

Q. And was that after the accounts for which the goods were shipped had been delivered to Dockendorf?

A. Yes.

Q. And a substantial amount of these goods had actually been shipped and bills of lading had arrived at the office of the Schwab-Kepner Company?

A. So I am informed.

Q. How did it happen, Mr. Williams, that following the usual custom you did not secure those bills of lading and turn them over to Mr. Dockendorf? 1131

Mr. Rosenberg: I object on the ground that it assumes a usual custom which has not been proven.

Q. Ordinarily, Mr. Williams, it was the custom for the bleachery to send the bills of lading for the shipment of the goods to the Schwab-Kepner Company and if the accounts had been assigned to Mr. Dockendorf the bills of lading would be sent down

1132 by the Schwab-Kepner Company to Dockendorf's office?

A. Accompanied by a delivery receipt or a warehouse receipt, one or the other, when the goods had been delivered to the customer. You see the fact that these goods had been shipped to New York did not complete a delivery, it had to show the final lodgment with the customer or in warehouses for delivery to the customer.

Q. Now, in the case of this substantial amount, was that done with those bills of lading?

A. Was what done?

Q. Were they sent by the Schwab-Kepner Com-
1133 pany after their receipt to Dockendorf?

A. They were not.

Q. Why not?

A. While the goods were either in transit or at the dock it was found by the pledgee—

Q. What do you mean by the pledgee?

A. Bank. It was found by the pledgee that some checks sent to this pledgee by the Schwab-Kepner Company were not good; that there were not sufficient funds at the bank or banks on which they were drawn to pay them and a representative of the Slater Trust Company came to New York and had a conference with Mr. Kepner on Saturday
1134 afternoon, I believe the first Saturday in November. On Monday morning I learned as a result of inquiries made by me immediately on my arrival at the office that some time Saturday afternoon the bills of lading for goods shipped by the Sales Bleachery, the holders of the merchandise for the account of the Slater Trust Company, the bills of lading had been surrendered to the Slater Trust Company representative.

Q. Wasn't it part of your duty as Mr. Dockendorf's representative to see to it that such bills of lading as came in from the bleacheries for goods

shipped to make good accounts assigned to Dock- 1135
endorf should be received by the Schwab-Kepner Company and promptly transmitted to Mr. Dockendorf?

A. If you mean by that that the bills of lading were to come into my possesison and be sent by me, no.

Q. Weren't you there to oversee that and see that it was done?

A. Only so far as I was able to in the ordinary course of business.

Q. Why were you unable to do it in this particular instance and how did it happen that this large sum of bills of lading did not get to Dockendorf? 1136

A. I never saw them. I didn't open the mail. I never saw them.

Q. Was that one of the kind of contingencies that you had in mind when you had this conversation with Mr. Dockendorf concerning the risk of the business which he was running?

A. Unquestionably. Without a single doubt.

Q. And isn't it a fact, Mr. Williams, that you feel to-day and that feeling affects your testimony that the prophecy you made to Mr. Dockendorf was fulfilled?

A. I feel to-day that the prophecy was fulfilled; I have no knowledge and to the best of my belief, 1137
and I am stating that on oath, I do not believe my prophecy has affected my testimony here. I say it with the utmost earnestness.

Q. Now, didn't this situation arise, Mr. Williams

A. I want to say right here that prior to Mr. Dockendorf's going to Europe, I warned him verbally and in writing that I would not be responsible for anything except personal neglect on my part.

Q. Isn't it a fact, Mr. Williams, that this $120,000 worth of accounts that did not ripen into se-

1138 curity because of the failure of the bleachery to ship and the transaction with regard to the bills of lading that never came to Mr. Dockendorf, did not these things all happen while Mr. Dockendorf was abroad?

A. They happened during his absence.

Q. What do you mean by during his absence?

A. After he had left New York.

Q. And had gone abroad?

A. While he was still on the ocean.

Q. Mr. Williams, you testified at page 45 of your testimony in answer to Mr. Wolf's question, that it sometimes happened that the bleacheries de-
1139 clined to ship the merchandise until the account of the Schwab-Kepner Company was put into better shape. You testified that it had happened and that in that situation the account would be put into better shape by two things, either the reduction of the loan or an increase in the amount of collateral. In the case of this $120,000 of accounts receivable, was it actually put into better shape in the manner you have testified to at page 45 so that the goods were shipped?

A. Not to any appreciable amount, Mr. Cohen.

Q. So that the situation was that $120,000 worth of what Mr. Dockendorf expected would become
1140 good collateral was, shortly before the bankruptcy, destroyed and never came into existence by reason of the fact that a large part of it was never shipped from the bleachery and another large part of it was shipped and recalled by the recovery of the bills of lading?

A. Yes, that is correct.

Q. It was that situation to which you referred at pages 47 and 48 of your testimony relating to Mr. Dockendorf's position if accounts which he had received and which in the ordinary course of

business would be made good had not been made good? 1141

A. That was the precise thing.

Q. Prior to this occasion when the bills of lading did not come into your hands, had bills of lading from the bleacheries come into your hands?

A. No, sir. They may have incidentally but it was not customary that they should.

Q. To what extent could you supervise the proper receipt of such bills of lading and their transmission to Dockendorf?

A. Mr. Dockendorf's office used to send me up from time to time a list of items for which they had not received them and I would trace them and 1142 report on them.

Q. Then are we to understand that until you started to trace them after notice from Mr. Dockendorf's office there was opportunity for any officer of the Schwab-Kepner Company to dispose of those bills of lading?

A. He might do so without my knowledge. There was that possibility.

Q. And was that one of the weaknesses in the system of the transaction of the business between the Schwab-Kepner Company and Mr. Dockendorf that you as a credit man observed and called to Mr. Dockendorf's attention? 1143

Mr. Wolf: I object on the ground that it calls for a conclusion and asks for an opinion of the witness upon a series of transactions and not what was said or done

Question withdrawn.

Q. Was this one of the things that you had in mind upon the occasion when you warned Mr Dockendorf?

Mr. Wolf: We object to his calling for the mental operation of the witness's mind and

1144 not for a conversation or a statement of facts.

Objection overruled.

Question read.

A. It was unquestionably one of the things to which I directed his attention not only verbally but in writing.

Mr. Cohen: I move to strike out the last part of the answer "to which I directed, etc."

Motion allowed.

Q. Mr. Williams, referring to the testimony
1145 which you gave at pages 27 and 29 of the February 1st hearing, were you taking into account when you made that answer any information which you had gathered since the bankruptcy proceedings were began against the Schwab-Kepner Company?

Mr. Rosenberg: Objected to, immaterial whether he received the information before or after.

Overruled.

A. I made that answer as nearly as a man can from the information which I had as of the date of the criticism, August 1st, 1910.

Q. That doesn't answer my question. Do you
1146 not recall that you were asked questions preceding that one as to whether information which you had obtained since that date had confirmed your opinion?

A. Yes.

Q. Have you obtained any information since that date?

A. Since August 1st, 1910?

Q. Yes.

A. Unquestionably, I think so.

Q. And have you obtained any information since these proceedings were begun about the financial

condition of the Schwab-Kepner Company on or about the first of August, 1910? 1147

A. I think I may say that in substance—

Q. Have you or have you not? I am entitled to have you answer that yes or no, whether you have obtained any such information.

Master: It should be answered yes or no if the witness can so answer.

A. I am frank to say I don't believe I can answer that question yes or no, with every desire to answer it in that way.

Q. You have been in the employ of the Receivers since this bankruptcy proceeding was begun? 1148

A. I have.

Q. And of the Trustee?

A. I have.

Q. And at the request of the Receivers haven't you made examinations of the books of the Schwab-Kepner Company?

A. I prepared a statement for the Receivers as the books and records showed at the date of the bankruptcy.

Q. Did you not when you were answering the question of counsel at the last hearing as to the financial condition of this concern have that information which you had secured while working for 1149 the Receivers in this matter?

A. Did I—I don't understand the point of your question.

Question read.

Q. Can't you answer that question yes or no?

A. I don't think I can in justice to anyone here. I would if I could do so honestly.

Q. You certainly secured whatever information concerning the Schwab-Kepner Company affairs

1150 there was while acting for the Receivers before you were asked these questions at the last hearing?

Mr. Rosenberg: I object on the ground that it is a fact not proven that he secured that information. He had the information prior to the bankruptcy.

Objection sustained.

Q. Whatever data you furnished to the Receivers while in their employ you furnished to them before you testified at the last hearing?

Mr. Rosenberg: I object, immaterial.

Objection withdrawn.

1151

A. That is true.

Q. And that data you secured for the Receiver from the books of the Schwab-Kepner Company?

A. That is true.

Q. And that data you received after this proceeding was begun?

Mr. Rosenberg: I object unless Mr. Cohen defines what he means by data.

Overruled.

A. If you mean, Mr. Cohen, by that did I get additional information?

1152 Q. I will go over the ground again. You were in the employ of the Receiver after this bankruptcy proceeding was begun?

A. I was.

Q. As the representative of the Receivers you made an examination of the books of the Schwab-Kepner Company?

A. I prepared a statement for the Receivers for the creditors' meeting from the books and records.

Q. And that statement you prepared after the bankruptcy proceedings were begun?

A. I did.

Q. And that statement you turned over to the 1153
Receivers?

A. I did.

Q. And that you did before you were examined at the last hearing?

A. That is true.

Mr. Cohen: Now, if your Honor please, I move to strike out the answer at page 29 which your Honor received for the purposes of the record though sustaining the objection raised at page 28 upon the ground that the question and answer included information which this witness received not as the agent of Dockendorff but as the representative of the Receivers and cannot be admitted even on the theory of my distinguished adversary as an admission against interest. I know of no way in which the Receivers may create evidence against a reclaiming creditor by employing him to go over the books or employing a representative previously employed by the reclaiming creditor and then having him testify. 1154

Master: I will allow the record to stand as it is.

Mr. Wolf: We request that Mr. Dockendorff produce all letters received by him from Mr. Williams from August 1st to the date of the receivership, and we ask that the Master order that they be produced. 1155

Mr. Rosenberg: I also want to call for the production by Mr. Cohen of any statement of account or accounting rendered by Mr. Dockendorff, if any, to Schwab-Kepner Company from August 1st, 1910, to the date of the bankruptcy.

Mr. Wolf: We ask that the Master direct

1156 the production of the letters and statements just called for.

Mr. Cohen: We will produce them if we have them.

Mr. Wolf: I also ask the Master to direct Mr. Dockendorff to produce all contracts between himself and the Schwab-Kepner Company in writing. These papers state that there are other agreements between the parties. We ask that all agreements subsequent to May 16th, 1910, or prior to that date, between Mr. Dockendorff and the Schwab-Kepner Company be produced at the next hear-
1157 ing.

Master: I will make the direction if necessary.

Sworn to before me this 3rd day of February, 1911.

Adjourned to Wednesday, February 8th, 1911, at 10:30 A. M.

1158

UNITED STATES DISTRICT COURT, 1159

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on petition of John E. Dockendorff & Company, before Edwin G. Adams, Referee in Bankruptcy, as 1160
Special Master, at No. 165 Broadway, New York City, on Wednesday, February 8th, 1911 at 10:30 A. M.

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and JAMES ROSENBERG, Attorneys for Receivers.

It is understood that the petition was filed on the 29th of November, 1910, and Receivers appointed on the same day.

1161

CYRUS WILLIAMS, recalled:

By Mr. Wolf:

Q. Mr. Williams, you have testified that Mr. Kepner told Mr. Dockendorff that he, Kepner, had very favorable contracts with the mills for the purchase of goods from which he expected to realize a handsome profit, do you recall that?

A. I do.

Q. Can you tell whether or not subsequent to

1162 August 1st, 1910 goods were sold by the Schwab-Kepner Company at a profit?

Mr. Cohen: Objected to, the matter has been completely covered and is not proper re-recross examination.

Question withdrawn.

Q. Mr. Williams, I call your attention to the testimony give by you heretofore in which you said that Mr. Kepner told Mr. Dockendorff that he had very favorable contracts with the mills for the purchase of goods for which he fully expected to realize a handsome profit. Can you tell whether
1163 or not subsequent to August 1st, 1910, goods were sold by the Schwab-Kepner Company so as to realize a profit?

Mr. Cohen: Objected to, not proper re-recross examination and upon the ground that the witness was asked this question upon the first examination.

Objection overruled.

A. From what standpoint am I to answer the question? As I knew at the time or as I know to-day?

Q. So far as you knew at the time?

1164 A. I can't make any better answer than the one I made to Mr. Cohen.

Q. Make the best answer that you can now so that we will have it here on the record.

Master: Do you understand the question, Mr. Williams?

A. Yes, I think I do. It is a question as to whether the Schwab-Kepner Company was selling its goods at a profit or loss subsequent to August 1st, 1910 and I am to answer that question from the standpoint of that time and not as of to-day.

Q. From the time when the transactions took place? 1165

Mr. Cohen: I object to the question upon the ground that it involves a conclusion and speculation of the witness. It already appears that he could not tell accurately without making a test that he couldn't make without knowing the finishing charges and it is purely speculative.

Overruled.

A. The means I had of determining that question was the information I obtained from the shipping orders sent to me for checking. These shipping orders contained almost invariably, there may have been exceptions, two sets of figures, one showing the sale and all the details, from which the bills were made up and the other the amount to be stricken from the bleachery collateral, that is to say the amount which was to go out by the shipment of the goods and my opinion at that time was that taking the business as a whole they were not realizing a profit. 1166

Mr Cohen: I move to strike the answer out upon the ground that it now appears that the witness is now testifying from opinion derived from documents and examination of which he made and substituting the opinion of the witness for the opinion of the Court. The documents are not in evidence. I make the additional objection, that it now appears from counsel's argument to support the admissibility of the testimony that it is elicited as an admission against interest by the witness and it appearing of record that the witness is in the employ of the Trustee and I made the objection that it 1167

1168 cannot be regarded as an admission against interest.

Motion denied.

Q. Now, can you tell whether or not the selling of the goods by the Schwab-Kepner Company without a profit subsequent to August 1st, 1910, continued substantially without change down to the time of the receivership?

Mr. Cohen: Objected to on the ground that it calls for the witness's deduction from documents and transactions of quite a number and it involves his conclusion upon those
1169 facts without submitting the best evidence.

Overruled.

A. Based upon the explanation which I have already given that is my judgment.

Mr. Cohen: I move to strike out the answer.

Motion denied.

Q. What is your judgment, you say based upon the explanation that is your judgment, what is your judgment?

Mr. Cohen: Same objection.
1170 Same ruling.

A. Based upon the explanation which I have given my judgment is that at that time the goods were being sold without a profit, taking the business as a whole.

Q. Now, you testified at page 17, "Just Mr. Kepner's own expression of his belief that the profits which he would realize during the coming season would relieve the financial strain," what did you mean by "during the coming season?"

A. That, I think refers to a conversation in or about August, does it not?

Q. Yes. The question and answer is— 1171

"Q. And did Mr. Kepner say to Mr. Dockendorff at any of these interviews how he was to continue, what he meant by continuing in business?

A. Just Mr. Kepner's own expression of his belief that the profits which he would realize during the coming season would relieve the financial strain."

What did you mean by the words "during the coming season?"

Mr. Cohen: I object, that was a question which was asked and the answer made on Mr. Rosenberg's re-recross examination. 1172

Objection overruled.

A. I referred to that period of time immediately ensuing, say around the middle of August onward.

Q. Mr. Williams, you were asked by Mr. Cohen at page 22—

"Q. Did you make any investigation or any examination of the books for the purpose of determining from day to day whether goods were being sold at a profit or a loss?"

and you gave an answer which was stricken from the record and you were then directed to answer yes or no, and you said, "Mr. Referee, with every desire to fulfill the injunction to answer the question yes or no, I do not see how I can make any other answer than I have already made." Will you please tell us why you were unable to answer that question yes or no? 1173

Mr. Cohen: I object upon the ground that it has already been covered by previous questions and covered by the series of questions allowed by your Honor this morning.

Objection overruled.

1174 A. For the reason that I didn't know what meaning to attribute to the words examination of the books and it seemed to me that the only way that I could answer that would be an answer was to explain the source of the information.

Q. Mr. Williams, you were asked by Mr. Cohen at page 36 of the record as follows:

"Q. Now, Mr. Williams, take any particular day, say $1000 worth of accounts are sent down to Dockendorf covering $1,000 worth of goods to be shipped from the bleachery and on that particular day Dock-
1175 endorff advances to the Schwab-Kepner Company $800 and that $800 is deposited in the bank holding the goods at the bleachery as security for the loan. If that $800 is applied at the bank—

Mr. Cohen: I beg your pardon, Mr. Wolf for interrupting you but at page 37 it appears that objection to that question was sustained and the question was not answered.

Question withdrawn.

Q. You testified at page 40:

1176 "Q. What I am referring to is, wasn't there a time when a very substantial amount of accounts receivable which would have been good collateral if the goods had been shipped from the bleachery was cancelled, to use the expression used in the business, by reason of the fact that the goods were not shipped to the customers?

A. That is true.

Q. What was that amount?

A. Approximately $120,000 or $125,000."

Do you recall that testimony?

A. I do.

Q. Can you explain how Mr. Dockendorff had made such a large amount of advances against orders, the goods for which had not as yet been shipped by the bleacheries? 1177

Mr. Cohen: I object to that, the redirect examination of counsel for Mr. Dockendorf at page 40 was brought out by the examination of counsel for the Trustee and this is not proper re-recross examination.

Objection overruled.

Mr. Cohen: I now insist that if this examination goes on, if this explanation is asked for it is as if the witness were called by counsel out of order for direct testimony on this point by counsel. 1178

Master: I will hold that for this purpose the witness is the witness of the respondents and that the petitioner may cross examine him.

Mr. Rosenberg: I should like to suggest that the Master defer his decision on that point as to whose witness this is.

Master: I see no reason for deferring it.

Question read.

A. Mr. Rosenberg, it seems to me that is hardly a fair question to put to me. It seems to me, if I may be permitted to say so, a more fitting question to be put to Mr. Dockendorf. 1179

Question withdrawn.

Q. Can you tell the approximate amount which in the ordinary course of business Mr. Dockendorff advanced to the Schwab-Kepner Company on orders, the goods for which had not as yet been shipped by the bleacheries?

Mr. Cohen: Objected to upon the same ground. It has already been covered and

1180 if it has not been covered it is introducing new matter and further it involves a conclusion from data already in evidence, which is the best evidence.

Objection overruled.

Question read.

Mr. Wolf: I mean from day to day.

Mr. Cohen: I suggest also that on this point counsel makes the witness his own witness and I am entitled to cross examine.

Master: I will not rule on that now unless you want to make an objection that it is leading.

1181 A. That fluctuated and I hesitate to give figures without refreshing my memory.

Q. You testified at page 45 in answer to Mr. Cohen's question that you warned Mr. Dockendorf verbally and in writing that you would not be responsible for anything except personal neglect on your part, prior to Mr. Dockendorf's going to Europe?

A. Yes, sir.

Mr. Rosenberg: In connection with that I call upon counsel for Mr. Dockendorf to produce the writing.

1182 Mr. Cohen: Mr. Townsend with Mr. Dockendorff made a search for all letters received by Mr. Dockendorff from Mr. Williams in accordance with the direction of the Court and will have them here. I understood that he was to be here at the beginning of the session and we will produce those documents provided the other side will put them in evidence.

Mr. Wolf: We call for the production of the documents without any stipulation.

Q. Have you a copy of that letter, Mr. Williams? 1183

A. I have.

Q. Will you produce it?

Witness produces document.

Mr. Wolf: Subject to correction we offer the document in evidence.

Mr. Cohen: We have no objection to the admission of the letter, but we submit that the offering of the letter will give us the right to cross examine as the document is new matter.

Mr. Wolf: We will withdraw the offer.

Mr. Cohen: I object to its withdrawal 1184
after it has been offered and we have made no objection to its admission. Counsel cannot gamble upon what the attitude of the other side is going to be.

Objection overruled.

Offer withdrawn.

Mr. Wolf: We will offer the letter in evidence.

Mr. Cohen: No objection.

Received in evidence and marked Exhibit 136, February 8th, 1911.

Exhibit reads as follows: 1185

"New York, October 28th, 1910.

"My dear Sir:—

Before you leave N. Y. I wish to put in writing what I have already stated verbally, viz.: that I will not accept any responsibility for the methods of business here or anything which may occur to your detriment except through neglect or oversight on my part, personally. I will not accept any responsibility for goods twice charged or for credits not issued nor for any disbursements

1186 which the future might show to be of a character different from what they appear to be. In fact, to make the story short I am dealing with a man whose sense of right in my judgment is sadly warped and I shall not accept the responsibility of any failure to detect in time any deception he may practice. In fact, I am here as a business man, not as a detective.

Yours truly,

(signed) Cyrus Williams.

J. E. Dockendorff, Esq."

1187 Q. Mr. Williams, you have been examined by Mr. Cohen with respect to your employment by the Trustee. Will you explain the nature of your employment by the Trustee?

A. I believe that is contained in a stipulation between the Trustee and the Dockendorff interests.

Q. Are you doing anything for the Trustee beyond attending to the collection of the outstanding accounts which Mr. Dockendorff claims to have, assigned to him?

Mr. Cohen: I object upon the ground that it is leading and further upon the ground that the witness has already testified that he made examinations of the books

1188 and reports thereon to the Receivers.

By the Master:

Q. What services have you performed and are you performing for the Receivers and the Trustee?

A. I am not performing anything for the Trustee nor did I for the Receivers except immediately upon the Receivers' taking possession they employed me to present a statement of the affairs as shown on the books and documents of the company, which I did. Since that time I have been employed under the stipulation entered into be-

tween parties in reference to the collection of 1189
the accounts and such things as are directly and indirectly connected therewith. I have made no examination nor have I been asked to make any that I recall, unless it may be that I have been asked if I could make such an examination, but I have not been asked to make any on behalf of the Trustee or his attorney nor on behalf of Dockendorf nor his attorneys, except directly or indirectly in accordance with the stipulation.

By Mr. Wolf:

Q. So that with the exception of preparing this report for the Receiver for the committee of cred- 1190
itors your duties have been the collecting of the accounts and the work incidental thereto?

Mr. Cohen: I object, leading and involves a conclusion; overruled.

A. That is correct. Directly and indirectly in connection with the collection of the accounts.

Q. Those are the outstanding accounts of the Schwab-Kepner Company?

A. Yes, sir.

Q. Which are the accounts claimed by Mr. Dockendorff?

A. Mainly. Almost altogether.

Q. Mr. Williams, you testified about some law 1191
suit which was an asset of the Schwab-Kepner Company, against the Warren Company.

A. I think that was the name.

Q. Can you tell the amount involved in that lawsuit?

Mr. Cohen: I object, immaterial and irrelevant and I do not recall any such testimony.

Objection overruled.

1192 A. It was a suit involving several thousands, but as my recollection is it was for breach of contract in which the Schwab-Kepner Company was the plaintiff.

Q. Was the claim of the Schwab-Kepner Company in excess of $10,000?

A. I don't recall at this moment whether it was just above that or just under that.

Q. Approximately, that was the figure?

A. That is about right.

By Mr. Rosenberg:

Q. Did you, personally, ever notify any of the
1193 customers of the Schwab-Kepner Company or any of the bleacheries or any of its creditors or any other person, firm or corporation of the assignment of accounts by the Schwab-Kepner Company to Mr. Dockendorff?

Mr. Cohen: I object upon the ground that it is too general, covers a variety of subjects, opens the door to further redirect examination on all of these subjects and upon the ground that it has already been adequately covered.

Objection overruled; exception allowed.

Question read.

1194

A. What period of time is covered by that question?

Q. Between the time of your employment and the time of the bankruptcy.

A. No, sir.

Q. Did anyone else so far as you know, either Mr. Dockendorff or Mr. Kepner or anybody else give such information during that time?

Mr. Cohen: I object on the same ground.

Overruled.

A. I have no knowledge of any such notice having been given. 1195

Mr. Wolf: I neglected to call upon Mr. Williams for the production of a memorandum that he made of a conversation with Mr. Dockendorff. Will you now produce it, Mr. Williams?

Witness (producing memoranda): That also contains something additional and the first six lines only refer to the matter.

Mr. Cohen: Has the other part of the paper any bearing upon this case?

A. Yes, sir. 1196

By Mr. Wolf:

Q. This memorandum of the conversation of October 24th, A. M. the first six lines, was that made at the time of the interview with Mr. Dockendorff?

A. It was not written on that piece of paper at the time. It was on another piece of paper at the time and then when the latter matter came up I transferred it and added this note.

Master: What became of the original?

A. I probably destroyed it. But I wrote it word for word. It was not more than a week later. 1197

Q. On October 31st, you made another memorandum as to a conversation with Mr. Sudman?

A. Yes, sir.

Q. Who is he?

A. Mr. Dockendorff's chief clerk.

Q. Was this made by you at the time?

A. Just as quickly as I could go to my desk and write it.

Mr. Wolf: We offer the memoranda in evidence. There being no objection, re-

1198 ceived in evidence and marked Exhibit 87, February 8th, 1911, consisting of two sheets.

Q. Will you read, please, into the record, the memoranda?

A. "October 24. A. M., Interview with J. E. D. —who wanted to know why I thought the business was in a precarious condition when Kepner said it was improving—told him it was a matter of judgment and temperament—October 31 between 9:30 and 10:00 telephoned to Sudwen and asked him if he remembered that I warned him and J. E. D. that 'kiting' was jeopardizing J. E.
1199 D.'s position—

1. He explained that J. E. D. did not look at it in that way.

2. Told him to be sure and remember it for the kiting was over $30,000 and that J. E. D. was going to take his medicine soon.

3. And closed the conversation by asking him if J. E. D. did not think I was easily scared—his answer was that D. thought I was easily frightened—and I replied, 'Well, we'll soon see who is right'"—

1200 The figures at the head of each section show the order in which the memorandum is to be read.

By Mr. Cohen:

Q. I understand you testify that this memorandum, Exhibit 87, so far as the lower portion dated October 31st is concerned, was made on or about the 31st of October?

A. Immediately after the conversation. It was a 'phone conversation.

Q. And the first part is a memorandum of a conversation had on the 24th of October with Mr. Beckendorf?

A. But not on the original piece of paper on which I wrote it. 1201

Q. The original memorandum you destroyed?

A. Yes.

Q. Did you copy this from the original memorandum before you destroyed it?

A. Yes.

Q. Was there any special reason why you should put all of these two interviews down on a piece of paper, on one piece of paper?

A. I don't know. I think it was more mechanical than anything else.

Q. Did you make memoranda of all the conversations you had with Mr. Deckendorf? 1202

A. I did not.

Q. And with Mr. Sudman?

A. I did not.

Q. You made memoranda then only of the two interviews on the 24th and 31st of October?

A. If you refer to that which I kept for my own use?

Q. Yes.

A. Only these two.

Q. In this memorandum of August 31st you refer in quotation marks to the word "kiting"?

A. Yes, sir.

Q. You say "kiting" is jeopardizing J. E. D.'s 1203 position?

A. Yes, sir.

Q. By J. E. D. you referred to Mr. Deckendorf?

A. Yes, sir.

Q. What did you mean by kiting?

A. I meant the giving of checks for which, at the time they were drawn and issued, there were not sufficient funds at the banks upon which they were drawn to meet them.

Q. Given by whom?

A. Schwab-Kepner Company.

1204 Q. To whom?

A. Various parties.

Q. Drawn upon what banks?

A. They were drawn on several banks. Amityville, First National Bank of Amityville, L. I. I think originally the checks were drawn on every bank but one of them, the Westminster, threw them out so that Mr. Kepner didn't draw any other on that bank.

Q. What did you mean by saying that "kiting" was jeopardizing J. E. D.'s position"?

A. That will require quite a lengthy answer, do you want me to make it?

1205 Q. Perhaps I can facilitate it by asking questions.

Mr. Rosenberg: I object; I ask that the witness be allowed to proceed with his answer.

Overruled.

Q. You were examined at considerable length at previous hearings in regard to the dangers of Deckenhorff's position by reason of the situation that might arise in case the bleacheries refused to ship the goods?

A. If for any reason the goods were not shipped,
1206 I think was the way I put it.

Q. And at page 16 after referring to the situation created by the $120,000 worth of collateral which was not made good you were asked whether that was the situation to which you referred at pages 17 and 18 relating to Deckenhorff's position and you said that was the precise thing. Will you step around here, Mr. Williams, and read over your testimony at pages 15 and 16.

Mr. Rosenberg: I object, counsel's duty is to ask questions.

Mr. Cohen: If the Court pleases, the wi

ness said it would require a long explanation 1207
to answer the question and counsel is of the opinion that the explanation had already been given upon the record. I think it would be proper under the circumstances and in fairness to the witness, instead of taking up more time reading extracts from the examination to hand him the typewritten copy of the minutes and ask him to read what he testified to and then ask him whether the explanation which he has already given is the explanation which he would give to this. I think in fairness to the witness he ought to be permitted to read the testimony. 1208

Objection sustained.

Q. Mr. Williams, referring to Exhibit R6, the letter in which you say, "before you leave N. Y.," the letter is dated October 28th, does that refresh your recollection as to the precise time when Mr. Dockendorf left New York?

A. The last time I saw him—I don't know when I did see him. I think he sailed the last Saturday in October.

Q. Do you recall what date that was, the last Saturday in October?

A. I think it would be the 29th.

Q. He sailed in the morning? 1209

A. I don't know.

Q. Do you know where he sailed from?

A. Only from hearsay afterwards. I did not at the time.

Q. When you said before you leave New York, you mean before he sailed for Europe?

A. I understood Mr. Dockendorff was going away, but for what length of time, or to what point he was going I did not know.

Q. Did you know that he was going to sail abroad?

A. Do you mean by that leave this country?

1210 Q. That he was going to Europe?

A. I assumed that he was. I don't know that anyone told me, but the impression I had was that he was going direct to London and back again.

Q. Is the paper which I now hand you the original letter of which Exhibit R6, is a copy?

A. Yes, sir.

Mr. Cohen: I ask that it be marked for identification.

Marked Exhibit P18 for identification, February 8th, 1911.

Q. Mr. Williams, Exhibit R6 is not a carbon copy
1211 of the original letter?

A. No, sir.

Q. It is an original impression?

A. Yes, sir.

Q. In typewriting?

A. Yes, sir.

Mr. Cohen: Mr. Referee, this is one of the documents which we have been called upon to produce and we are ready to give it to the other side if they will put it in evidence.

Mr. Wolf: We have already put the copy of it in evidence.

1212 Q. Mr. Williams, is this letter Exhibit P18 for identification all in your own handwriting, including the signature?

A. Every scrap of it, sir.

Sworn to before me this 8th day of February, 1911.

Mr. Rosenberg: We now call for the production of the documents called for at the last hearing. 1213

Mr. Cohen: We are ready to permit the other side to inspect the documents produced by us pursuant to their request provided they will put them in evidence.

Mr. Wolf: What documents have you produced?

Mr. Cohen: All that we have.

Mr. Wolf: We ask that they be marked for identification at this time.

Mr. Cohen: I will offer them for identification.

Marked Exhibits R8 and R9 for identification, February 8th, 1911. 1214

Mr. Wolf: We would like to have the contracts called for.

Mr. Townsend: We will produce the contract between SchwabKepner Company and John E. Dockendorff dated September 21st, 1908, Commissions Agreement between the same parties of the same date, and certified copy of resolutions adopted by the Board of Directors of the Schwab-Kepner Company at a meeting held September 21st, 1908. Also, contract between the same parties dated September 21st, 1909, Commissions Agreements between the same parties of the same date, and certified copy of resolutions of the Directors of the Schwab-Kepner Company at a meeting held September 21st, 1908, as amended at a meeting held in 1909; Commissions Agreement between the same parties dated May 16th, 1910. 1215

Mr. Cohen: These documents we have no objection to submitting to the other side for their inspection and they may offer them in evidence or not as they please.

1216 Mr. Rosenberg: May I ask also whether you have produced any statements of account or accountings rendered as demanded at the last hearing.

Mr. Cohen: There were none.

Recess Taken.

After Recess.

Cross examination of J. E. Dockendorf closed.

Petitioner Rests.

1217 Mr. Rosenberg: We move that the petition be dismissed on the grounds, generally, that the facts stated in the petition have not been proven and on the ground that no cause of action has been proven by the petitioner; on the further ground that it appears affirmatively from the record that the transaction was a secret one and fraudulent in law and on the ground that it is affirmatively proven by the petitioner's case that the petitioner's title to the collateral which the petitioner claims vested in the petitioner only upon the delivery to him of the checks represent-
1218 ing the proceeds of the collateral and at no earlier date. The record shows that a course of business was adopted whereby papers were given to Mr. Dockendorf which were called assignments of accounts, but the record shows that those papers were not assignments of accounts but assignments of nothing at all, inasmuch as what purported to be an account could not become a chose in action or a claim on an account until goods were shipped to customers, so that the petitioner's proof shows that the title of Dockendorf to what has been called loosely

in the record an account receivable is a title 1219
to nothing. The proof shows further, the petitioner's proof, that the petitioner wrote a letter on May 26th to Mr. Corbett, the Treasurer of the Schwab-Kepner Company, stating among other things "I hereby appoint you my agent to receive the checks, notes, drafts and moneys coming to the Schwab-Kepner Company in payments of its accounts receivable." There is an expressed designation in that letter of what is the true fact in this transaction, that nothing more was received by Dockendorf than a promise, an agreement in futurity to pay to Docken- 1220
dorf moneys to be received in the future from the customers of the Schwab-Kepner Company. Under Section 70 of the Bankruptcy Act to which I shall wish to refer more fully presently, title to all the accounts not collected at the date of bankruptcy vests in the Trustee in bankruptcy. Section 70, stating that property which the bankrupt could or might have conveyed belongs to the Trustee and this property was left entirely in the ostensible ownership as well as in the actual ownership and control of the Schwab-Kepner Company. If they could have con- 1221
veyed it and given a good title to it and if the account of the alleged lienor is such as to leave the bankrupt in the ostensible possession of that property then as against the Trustee in bankruptcy that lienor has no title and that is a point upon which we shall ask to submit briefs. We assert further that the petitioner's case shows affirmatively that the transaction was kept secret from the customers of the Schwab-Kepner Company, from its creditors

1222 and from the world at large, that it was conveyed to no one and the fact was kept entirely a secret between Dockendorf and the Schwab-Kepner Company. We assert upon the basis of that that the petitioner has failed to establish as against the Trustee in bankruptcy who stands in the shoes of a judgment creditor with an execution which remains unsatisfied, a title which is valid to these accounts receivable, and generally we ask that the petition be dismissed both on the grounds that it fails to show any title in the petitioner to the ac-
1223 counts which are the subject of this litigation as against the Trustee and upon the further ground that the evidence fails to show any such title. We ask that it be dismissed for the further reason that it has been affirmatively established that all transfers or pretended transfers received by Dockendorf after August 1st, were received when he had reasonable cause to believe that the company was insolvent, when he was put upon his inquiry as to that matter and when he had knowledge and had reasonable cause to believe that every dollar of the
1224 accounts that he was receiving was being created from the delivery to the Schwab-Kepner Company by its unsecured creditors whom Dockendorf kept in ignorance of those facts which were called to his attention. We ask further that the petition be dismissed on the ground that a present valuable consideration was not given for the pretended title received by Dockendorf and on the ground that all transactions after August 1st were in law a fraud against the unsecured creditors and against the Trustee in bankruptcy.

Mr. Wolf: I have one other thing to sug- 1225
gest. We ask that this petition be dismissed for the reason that it does not appear that any of the assigned accounts, the proceeds of which Dockendorff is endeavoring to have the Trustee turn over to him have been assigned to him in such way that the asignment stands, he at the time of the receiving of the assignments having knowledge of the insolvency of the Schwab-Kepner Company, and by that I mean this: At the time that Dockendorff received the pretended assignments of the accounts he, on the uncontradicted evidence, knew that the Schwab-Kep- 1226
ner Company was hopelessly and totally insolvent. Now he comes into Court and says he is the assignee of those accounts which the Receiver has collected. He may be the assignee but he has not a lien and the bankruptcy court will not order the Trustee to turn over unless he has a lien. He hasn't established any lien for the reason that he hasn't proven that he has made any advances against the accounts which the Trustee has collected and the testimony shows that he got some accounts of which he approved and made advances against and some of which he 1227
disapproved and made no advances against and there isn't any evidence that the accounts which the Trustee has collected are the so-called approved or disapproved accounts and if they are the disapproved accounts against which he made no advances then his assignment against those must fail for the reason that he has established no lien against and if he has a lien against them it can only be maintained for the amount of the present advance as against those as-

1228 signed accounts; and for the reasons which Mr. Rosenberg has set forth and for those additional reasons and generally because the petitioner has failed to prove the facts warranting a turn over as against the Trustee, we ask that the petition be dismissed.

Mr. Rosenberg: I wish to direct the attention of the Court particularly to this point: Mr. Dockendorff's claim to title rests upon an alleged assignment of accounts. Now, it has been affirmatively proven by his own witnesses that what he got was a paper which purported to be an account but that
1229 subsequent thereto it was the invariable course of business for the goods to be shipped from the bleacheries. If these goods were not shipped at the time the so-called account was assigned, nothing was granted other than a promise that if a certain customer paid certain moneys that those would be turned over. Now, that promise is not a *res* which is capable of being transferred and the first moment when title could have vested in Dockendorff was when he received the checks of the customers and any moneys, therefore, paid by customers after
1230 the bankruptcy and paid to the Schwab-Kepner Company and which were made payable to the Schwab-Kepner Company with the consent of Mr. Dockendorff were moneys which that company owned and had title to, all that it had done was to agree to pay those moneys to Dockendorff as witnessed by this document of agency to Corbett and the various transactions between the parties. Now, the petition states at folio 5, "That in the normal course of business the remittances in payment or on account of the accounts re-

ceivable which had been assigned to your pe- 1231
titioner were received at the office of the said Schwab-Kepner Company." Now, they were not only received at the office of the Schwab-Kepner Company but they were payable to the Schwab-Kepner Company. At the time the account had been assigned or rather what was called an account was assigned it wasn't an account, it was nothing because nothing existed, no account existed because nothing had been shipped to the customers, there was nothing owing, so that the first moment when title could attach in Mr. Dockerdorff was when the check was received and 1232
that money which comes in after the bankruptcy being the money of the bankrupt and Dockendorf having only received a promise, it is no more than the promise to unsecured creditors to pay them their debts and therefore there was no title in the petitioner. We also call the attention of the Court to the fact that this is a transfer by an insolvent corporation, the proof shows that the corporation was insolvent within the meaning of the laws of the State of New Jersey and the bankruptcy law after August 1st and any transfers from them after that time are void 1233
as against the Trustee.

Mr. Cohen: I respectfully call the Master's attention to the fact that we can do no more than recommend what the respondents submit and I assume that as usual the Master will make no recommendation until he has considerered the whole case. We are glad to have the new position of the other side spread upon the record so that we will understand. We assume that when the entire evidence is in your Honor will receive briefs

1234 from us and since to meet the points raised will involve an elucidation of the evidence we think it can be better done by briefs.

Master: The matter being before me as Special Master I could not make a report at the conclusion of the petitioner's case recommending the dismissal of the petition unless it was very clear that there had been no *prima facie* case established. In such a case I suppose the order could be made but I don't think this is such a case, so, without passing upon any of the questions raised by the motion I will deny the motion for the reasons
1235 which I have given.

Adjourned to Friday, February 10th, 1911, at 1.30 P. M.

1236

UNITED STATES DISTRICT COURT, 1237

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of proceedings on petition of John E. Dockendorff, before Edwin G. Adams, Referee in Bankruptcy, as Special Master, at No. 165 Broadway, New York City, on Friday, February 17th, 1911, at 10:30 A. M. 1238

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for the Petitioner.
RALPH WOLF and JAMES N. ROSENBERG, Attorneys for Respondents.

Mr. Rosenberg: I move to strike out all testimony in the petitioner's case which purports to show that accounts were assigned to the petitioner. This motion is made on the ground that it has not been shown that 1239
the papers which were executed by the Schwab-Kepner Company purporting to be assignments of accounts represented real accounts because nothing in the record has shown that any merchandise was shipped to any of the alleged customers on these alleged accounts at any time prior to the bankruptcy proceedings and I move both to strike out all testimony purporting to show the assignments of accounts for the reasons just stated and for the dismissal of the petition-

1240 er's case also on the ground that he has completely failed in that respect. I would ask if the Court is not entirely prepared to rule on the motion that decision may be reserved because I think that an examination of the record will show that there is a great deal of weight to the motion.

Mr. Cohen: The motion is to strike out the evidence purporting to show the assignment of accounts because it does not show it to the satisfaction of the gentleman. That, I take it, is one of the legal questions that the Court has asked the Master to report

1241 upon. What is meant by the motion, of course, it would be very difficult to determine. All evidence which purported to show an assignment of accounts might strike out all of the evidence in the case with the exception of the actual advances. Of course the other side are perfectly willing to concede that we advanced money and any evidence that we got security for it they would be willing to strike out from the record. I do not believe that your Honor has any power to grant such a motion.

Mr. Rosenberg: The testimony shows in

1242 various parts that Mr. Doekendorff testified that accounts were assigned. "I received the assignment of accounts," and other similar statements of a like tenor. The petitioner's case shows, however, that these papers which he received and which he calls assignments of account were not assignments of accounts because there was nothing to assign, there was no assignment of account because no account existed. Now, on the ground that no account existed and that the petitioner's case affirmatively shows that no account existed,

I move to strike out all evidence to the effect or purporting to be to the effect that accounts were assigned to the petitioner. 1243

Motion denied.

JOHN B. KEPNER, recalled.

By Mr. Wolf:

Q. Mr. Kepner, prior to December 1st, 1910, what was your business?

A. Cotton goods converting.

Q. With what firm or corporation were you connected?

A. Schwab-Kepner Company. 1244

Q. Was that a partnership or a corporation?

A. Corporation.

Q. Organized under the laws of what state?

A. New Jersey.

Q. How long had that corporation existed?

A. Three years.

Q. Prior to December 1st, 1910?

A. Yes.

Q. What was your connection with the corporation?

A. President.

Q. Were you also a member of the Board of Directors? 1245

A. Also a Director, yes.

Q. What portion of the business of the Schwab-Kepner Company was directly under your general supervision and control as President of the corporation?

A. My duties were principally the purchasing of the goods and financial arrangements.

Q. Do you know John E. Dockendorff?

A. Yes.

Q. How long have you known him?

A. I have known him for several years.

1246 Q. Do you recall that in about the month of May, 1910, a new contract was entered into between the Schwab-Kepner Company and Mr. Dockendorff?

A. Yes.

Q. How long before December, 1910, had the Schwab-Kepner Company been doing business with Mr. Dockendorff?

A. I think about two years.

Q. Do you recall how many directors the Schwab-Kepner Company had on the first of January, 1910, or about that date, who the directors were?

A. I think I can recall them. They probably consisted of Mr. Corbett, Mr. Victor and myself. I
1247 think only three Directors.

Q. Did Mr. Corbett continue as a Director of the corporation right down to the time of the receivership?

A. Yes.

Q. And did you?

A. Yes.

Q. Did Mr. Victor?

A. Yes.

Q. Were any additional Directors elected in or about May or June or July, 1910?

A. Yes.

Q. Who?

1248 A. Mr. Hardy was elected a Director.

Q. When?

A. I think about May.

Q. And then when Mr. Hardy left the employ of your corporation in about July, 1910, did he resign as a Director and was a substitute elected in his place?

A. Yes.

Q. Who was elected?

A. Mr. Williams.

Q. What is Mr. Corbett's full name?

A. William A. Corbett.

Q. Was he likewise Secretary and Treasurer of the corporation? 1249

A. Yes.

Q. What were his duties as Secretary and Treasurer of the corporation?

A. Mr. Corbett's sole duties were correspondence with the bleacheries and conducting the actual converting of the goods. What was the nature of the business of the Schwab-Kepner Company?

A. We bought cotton goods in an unfinished state and finished them, converting them at finishing plants, and sold them.

Q. Do you call the bleacheries finishing plants.

A. Yes. 1250

Q. So the goods were bought in the gray at the mills, sent to the bleacheries for finishing and sold?

A. That is right.

Q. Do you recall what was the general course and conduct of the business of the Schwab-Kepner Company with Mr. Dockendorf respecting accounts which he charged back on so-called charge back slips, tracing the general conduct of the business from September, 1908, down to the time of the receivership?

A. You want to know the general course of business?

Q. Give us the first general course of business with respect to the charge backs? 1251

A. When an account matured after a certain grace allowed by Mr. Dockendorf, the account was charged back to us and we sent a check to Mr. Dockendorff covering that account.

Q. That was the first general conduct of the business with respect to the charge backs?

A. Yes.

Q. You say you sent a check, whose check did you send?

A. Our check, Schwab-Kepner Company.

1252 Q. On its own bank account.

A. Yes.

Q. For what amount, the amount of the charge backs?

A. For the amount of the collateral.

Q. That is the amount of the charge back?

A. The amount of the account which had matured.

Q. Can you tell us what was the so-called grace that was allowed you by Mr. Dockendorff after the maturity of the account before it was charged back?

A. I think fifteen days.

1253 Q. Can you tell us what general line of conduct of business succeeded the one you have just testified about?

A. After that, instead of giving Mr. Dockendorff our checks, Mr. Dockendorff would send us his check for the amount of these charge backs which we would endorse and return to him.

Q. So that instead of your furnishing the check of the Schwab-Kepner Company Mr. Dockendorff would draw his check to the order of the Schwab-Kepner Company which you would endorse to him and return to him likewise for the amount of the charge back?

1254 A. Yes.

Q. What was the next method of business that succeeded that with respect to the charge backs?

A. Well, later the transfer of checks was abolished and Mr. Dockendorff issued a charge against us for the amount of these accounts and that was all there was to it.

Q. Will you explain what you mean by that?

A. Our account was charged with the amount of these matured accounts which were charged back to us.

Q. The charge backs were charged to you on 1255
your account current?

A. Yes.

Q. And Mr. Dockendorff would credit you with the additional collateral from the Schwab-Kepner Company?

A. You mean new collateral?

Q. New collateral, yes.

A. Yes.

Q. Does that bring you down to the time of the receivership?

A. That was the method in vogue at the time of the receivership.

Q. When was the first method discontinued, 1256
that is the payment of the charge backs by the checks of the Schwab-Kepner Company?

A. Why, I imagine that was discontinued possibly eight months before the receivership.

Q. And when was the second method discontinued?

A. Roughly, I should say four months.

Q. And the third method was in vogue for the four months preceding the receivership?

A. Roughly, yes.

Q. Now, can you tell why one system was departed from and the other systems successively adopted?

1257

Mr. Cohen: I assume, of course, that the question calls, not for the opinion of the witness, not for any reasons but for the circumstances, the facts.

Question refrained.

Q. Can you tell us what the circumstances were that required or caused the successive change in the systems?

A. The reason for the abandoning of the giving our checks to Mr. Dockendorff was that in one

1258 or two instances or probably more frequently than that we hadn't the funds in the bank at the time of issuing the check and in some cases the check was not honored, we not getting the funds in in time to meet it and that was a source of annoyance to Mr. Dockendorf, so he adopted the method of issuing his checks to us and we endorsed it back to him. I cannot recall just why the second method was abandoned, unless—

Q. That is all we want, just what you know. If you can't recall that is all. Can you tell whether or not the majority of the goods sold by the Schwab Kepner Company to its customers were sold while
1259 at and delivered from the store or the bleacheries?

Mr. Cohen: I object upon the ground that it involves the conclusion of the witness.

Objection overruled.

A. The goods were principally sold from the bleacheries.

Q. Where were the goods, principally, when sold?

A. At the bleacheries.

A. And from what point were the goods principally shipped?

A. From the bleacheries.

Q. Was this substantially the unvarying course
1260 of the business?

Mr. Cohen: I object upon the ground that it is leading and calls for a conclusion.

Objection sustained.

Q. Can you tell what proportion or percentage of goods were thus sold and shipped, approximately?

Mr. Cohen: I obect upon the ground that I objected before.

Overruled.

A. A very large majority.

Q. Can you tell whether or not what purported 1261
to be the assignments of accounts of the Schwab-Kepner Company to Mr. Dockendorf were delivered to Mr. Dockendorf prior to or subsequent to the shipment of the goods by the bleacheries?

Mr. Cohen: I object, involves a conclusion from a large number of transactions and that the witness can not testify except as to each transaction.

Objection sustained.

Q. When an order was received from a customer what was the general practice or custom with respect to the transferring of the order or the account 1262
which would be created out of that order to Mr. Dockendorf and the shipment of the goods by the bleacheries?

Mr. Cohen: I object unless the time is fixed because it already appears of record by the cross examination of Mr. Williams that the custom varied. Prior to a certain time the bills of lading always accompanied the assignments of accounts and after a certain time there was some variation.

Objection overruled.

Mr. Cohen: I ask that the witness first be asked the question whether there was an 1263
invariable custom before answering the question.

Master: Was there any general custom or practice?

A. Yes.

Master: Answer the question.

A. The assignment of the accounts was generally made before the goods were shipped.

Q. Trace if you please the general custom of

1264 the business, beginning with the receipt by the Schwab-Kepner Company of the order the transferring of the same to Dockendorf and then the shipments of the goods by the bleacheries so that we can have the transaction before us.

A. Our custom was to make out when we received an order from a customer, we would charge the goods to that customer as soon as could be and the certificate which was sent to Dockendorf was a copy of the account and was made out simultaneously. We then sent shipping orders to the bleacheries covering the goods thus sold and when we received the bills of lading they were forwarded
1265 to Mr. Dockendorff.

Q. Now, will you please tell us whether or not the goods which were at the bleacheries which you thus directed the bleacheries to ship to your customers were subject to the liens of any institutions or the bleacheries?

A. Yes, they were.

Q. How would it be determined whether or not the bleacheries should ship the goods not subject to lien?

A. The bleacheries would determine that by the amount of collateral which they held.

Q. And if the collateral which they held was
1266 insufficient what was the general custom or practice respecting the shipment of the goods?

Mr. Cohen: I object upon the ground that it assumes that there was a general custom or practice.

Mr. Wolf: Add to the question "if any."

Mr. Cohen: I think the question fairly ought to be asked whether there was a general practice.

Master: Was there any general custom or practice?

A. Yes, there was a general custom.

Q. What was it?

1267

A. The goods, if the collateral at the bleacheries warranted the goods, of course, were shipped at once; if not they were not shipped until we replaced them with new gray goods or had reduced our loan with the bleacheries sufficiently to warrant them in shipping.

Q. How would the loan be reduced?

A. By sending money to the bank which made the advance.

Q. Which was done in the majority of instances? That is to say which predominated, the delivery to the bleacheries of new gray goods or the reduction of the loan by the payment of cash?

1268

Mr. Cohen: I object upon the ground that it involves the conclusion of the witness.

Overruled.

A. The general custom was to ship new goods into the bleachery. I believe your question was the general custom, wasn't it?

Q. Yes. How were those goods obtained by the Schwab-Kepner Company?

A. We bought them from mills.

Q. Take the last four months, can you tell which mills?

A. Yes. Parker, Hargraves, Valley Falls Company.

1269

Q. Were they purchased from the same mills with which you had theretofore been doing business?

A. Yes.

Q. Were they purchased on credit or for cash?

A. On credit.

Q. Do you recall having any conversation with Mr. Dockendorff respecting the purchase of gray goods for the purpose of enabling the bleacheries

1270 to ship goods which the Schwab-Kepner Company had on order from its customers?

Mr. Cohen: I object, leading.

Objection sustained.

Q. State any conversation you had with Mr. Dockendorff respecting the collateral at the bleacheries?

Mr. Cohen: I object unless the time and place is fixed.

Objection sustained.

Q. Did you have any conversation with Mr.
1271 Dockendorff respecting the collateral which the bleacheries held at any time?

A. Yes.

Q. Did you have such conversations within the six months preceding the Receivership?

A. Yes.

Q. In New York City?

A. Yes. You mean the conversations in New York City?

Q. Yes. Can you tell us what was said at this conversation between you and Mr. Dockendorf, what he said to you and what you said to him?

1272 Mr. Cohen: I object unless the time and place is definitely fixed, six months is a long time and New York City a big place.

Objection sustained.

Q. Can you remember any conversation that you had with Mr. Dockendorf in the early Summer of 1910?

Mr. Cohen: I think the fair way to do is to ask when that conversation took place.

Q. When did this conversation take place?

A. They took place quite frequently.

Q. Can you recall specific dates when they took 1273
place?

A. No.

Q. Do you recall whether the conversations were frequent in number or were only very few?

A. Well, we frequently spoke of it.

By the Master:

Q. Where did they usually take place?

A. I think most usually over the 'phone between Mr. Dockendorf's office and mine.

Q. At other times how and where?

A. Oh, we discussed it in Mr. Dockendorf's office. 1274

Q. Did you ever have any of these conversations with him except in his office and over the 'phone?

A. No.

By Mr. Wolf:

Q. Did you have any conversations with Mr. Dockendorf in the months of May or June, 1910, on that subject?

A. I don't recall.

Q. Did you have any in July of 1910 on that subject?

A. I am unable to fix any date as to when the conversations occurred. 1275

Q. Well, will you please tell us what you said to Mr. Dockendorf and what Mr. Dockendorf said to you respecting that, fixing the time of the conversation as nearly as you can?

Mr. Cohen: May I be permitted to examine the witness as to his ability to fix the time and place before he gives the conversation?

Mr. Wolf: We object to being interrupted. Mr. Williams also stated that he could not fix any time, that they went on intermit-

1276 tently and Mr. Cohen was allowed to examine Mr. Williams in exactly that way.

(Question read.)

A. Well, I should say the time—I know it occurred within thirty days of the Receivership and it was quite a frequent topic of conversation.

Q. You mean before that?

Mr. Cohen: I object, leading.

Q. What do you mean by saying that it was a frequent topic of conversation?

A. You wanted me to fix some specific time
1277 when the conversations took place. Now, I know that they occurred within that time and earlier than that, these conversations have been carried on for several months prior to the receivership.

Q. Will you tell us what the conversation was, what you said to Mr. Dockendorf and what he said to you?

A. Sometimes the subject was brought up by Mr. Dockendorf and sometimes by me. I would ask Mr. Dockendorff for money to meet maturing obligations and he would inquire about the bleachery situation, he would inquire generally about the collateral. If I hadn't the collateral ready to war-
1278 rant him in making the loan he would say, "well, I can't make you the loan" and he would want to know where I could get the collateral, could we sell the goods yes how would it effect the bleacheries it would cause the bleachery over-draft as we called it to go up and under those circumstances he would say that he declined to make the advance and he would say we had got to keep the bleachery condition within certain bounds or we couldn't get the money. That is about the substance of our conversations.

Q. Was anything said respecting the delivery of new collateral to the bleacheries? 1279

Mr. Cohen: I object, leading.

Overruled.

Question read.

A. Yes, that was brought up.

Q. What was said on that subject?

A. Mr. Dockendorf would inquire how long it would take us to get more goods to the bleacheries in order to fill up the gap caused by these withdrawals of merchandise, he would inquire whether we could do that and how long it would take and questions of that nature. 1280

Q. After August, 1910, can you tell whether or not you ever advised Mr. Dockendorf as to the bleachery situation and if so how?

A. Yes, we did advise Mr. Dockendorf.

Q. How.

A. By a daily report of the actual condition of the overdraft of the bleacheries.

Q. When was that system adopted?

Mr. Cohen: I object upon the ground that it assumes that it was a system.

Overruled.

A. I can't say except that it existed for several months. 1281

Q. Several months prior to what?

A. Prior to the receivership.

Mr. Wolf: We call upon Mr. Dockendorf to produce the reports regarding the bleachery situation received from the Schwab-Kepner Company subsequent to August 1st, 1910.

Mr. Cohen: If we have them we will produce them.

Q. Have you ever had any conversation with Mr.

1282 Dockendorf respecting the size or volume of business conducted by the Schwab-Kepner Company, and if so state the conversation giving time and place?

A. I don't think—I probably didn't grasp the question.

Question read.

A. I can't recall any specific time or place of any such conversation but we have discussed the size of the business. At times it would fall off, it would be brought up and if any large increase at any time occurred it was mentioned.

1283 Q. Did Mr. Dockendorf say anything to you respecting the amount of business that he thought the Schwab-Kepner Company should do?

A. Yes.

Q. State what was said between you and Mr. Dockendorf on that subject?

A. The amount of business which we should do was brought up in our interviews at times relative to our obligations which we had to meet. We derived all our money from Mr. Dockendorf and of course to get that money it was necessary for us to sell so many goods, a proportionate amount of goods and the amount of money required, of course

1284 was governed by the amount of maturing obligations so that we discussed that at times so as to enable us to prepare for future obligations.

Q. Now, what was said when you discussed it?

A. Well, we took a period, we will say of two weeks or a month or longer, sixty days, and we examined our maturing obligations during that period and ascertained the amount of money required to meet them from Mr. Dockendorf and the amount of sales necessary to make within that period to cover the drawings from Mr. Dockendorf.

Q. What do you mean by the amount of sales in your answer just given? 1285

A. The amount of goods which we would have to sell, the amount of accounts which we would have to make.

Q. Did you ever have any conversation with Mr. Dockendorf at which you suggested that the business was being conducted on too large a scale and Mr. Dockendorf said that it ought to be conducted on a larger scale, if so please state what was said?

Mr. Cohen: I object, leading, it states the subject of the conversation to the witness.

Question withdrawn. 1286

Q. Mr. Kepner, was anything said between you and Mr. Dockendorf respecting the quantity of goods to be bought and sold by the Schwab-Kepner Company? If so give the conversation giving time and place if possible.

Mr. Cohen: I object to the use of the words to be bought and sold on the ground that there was some kind of an agreement.

Overruled.

A. I think I just said there was such a conversation. We conferred on the amount of business we would have to do to cover our obligations, that is the amount of goods that would have to be sold and the proportionate amount of goods that would have to be purchased. 1287

Q. Can you explain that more fully, giving us what Mr. Dockendorf said to *you* and what you said to him on that subject?

A. Mr. Dockendorff, would call to my attention that—I will give figures if you want me to—you have here $100,000 to meet within the next thirty days, that means that you have got to sell $125,000

1288 of goods and that means that you have got to buy $125,000 of goods to cover it. That is the gist of the thing.

Q. Did Mr. Dockendorf have a list of maturing obligations?

A. Yes.

Q. How frequently would that be furnished to him?

A. Well, I can't answer as to that. It wasn't furnished by me.

Q. How often did you have a talk with him about the maturing obligations?

A. Oh, that occurred very frequently.

1289 Q. Was it the general custom or practice that you discussed with him all of the maturing obligations?

Mr. Cohen: I object, leading.

Overruled.

A. I can't say that it was the custom to discuss all of our maturing obligations.

Q. Can you tell whether or not a large percentage of your maturing obligations were discussed with Mr. Dockendorf or a small percentage?

A. This custom of discussing the maturing obligations came up comparatively recently and after

1290 it was once brought up it was discussed frequently.

Q. About when was it first started?

A. Oh, I can only answer that by several months prior to the receivership.

Q. Now, after, let us say May 1st, 1910, can you tell whether or not you were selling goods at a profit or a loss?

Mr. Cohen: I object, involves a conclusion of the witness from a large number of transactions.

Question reframed.

Q. Within the six months preceding the receiver-

ship can you tell us whether or not goods were sold 1291
by the Schwab-Kepner Company as a general rule
at a price exceeding the purchase price?

Mr. Cohen: Objected to, involves a conclusion of the witness from a large number of transactions and it already appears that this was a business of cotton converting which involved the sending of goods to the bleacheries for finishing. Whether or not they were sold at a higher price than they cost takes into consideration the purchase price plus the cost of converting and then compared with the selling price, it involves a knowledge of statistics. Now, whether or 1292
not the witness had any impression as to how he was conducting his business he certainly cannot testify in one fell swoop to the result. That can only be obtained by an examination and which Mr. Williams frankly told you he had never made, he only gave the impression produced on him from time to time and that was admitted in the case upon the theory that Mr. Williams being Dockendorf's representative impressions produced upon his mind were the same as impressions produced upon the mind of Mr. Dockendorf, but as to the President of the 1293
company going on the stand and testifying as to whether or not the general custom existed of selling goods at a greater or less price than they cost it seems to me is a curious way of proving what they would prove on the charge here, a serious one against both Mr. Dockendorf and the witness, if it be one that they bought goods for the purpose of selling them at a loss with no intention of paying for them.

1294 Objection overruled.

Question read.

A. I don't think I can answer that question except in the aggregate.

Q. All right answer it that way.

Mr. Cohen: I object on the ground that it involves the conclusion of the witness, a statement of the business for six months, it can only be stated with reference to the actual transactions.

Mr. Wolf: Will Mr. Cohen allow the cost and selling price of the goods as shown on
1295 the books of the Schwab-Kepner Company to go in evidence?

Mr. Cohen: I think the case should be proven in the regular way. If the books are inadmissible upon the ground that they do not bind Mr. Dockendorff, then certainly the impression of the President of the company on the witness stand is not.

Objection sustained.

Q. Can you tell whether the sales made during the month of November, 1910, were made at a price exceeding the purchase price paid for the
1296 goods by the Schwab-Kepner Company?

Mr. Cohen: Objected to on the same ground.

Overruled.

Q. Were you familiar with the purchasing of the goods?

A. Yes.

Q. Were you familiar with the prices paid for the goods?

A. Yes.

Q. Were you with the selling of the goods?

A. Yes.

Q. And the prices for which they were sold?
A. Yes. 1297

By the Master:

Q. What did you have to do with the sale of the goods?

A. Every sale was supposed to be submitted to me before it was effected.

Q. That was the custom?

A. That was the rule. There were some exceptions.

By Mr. Wolf:

Q. And the goods you bought yourself?
A. They had to bear my signature. 1298
Q. Now, can you answer the question whether during the month of November as a general rule the goods were sold by the Schwab-Kepner Company at a price not exceeding the cost price?

Mr. Cohen: I object upon the ground as stated before and upon the additional ground that the cost price includes other elements besides the price at which the goods were purchased.

A. I think there is no question about the goods having been sold at a loss during that month.
Q. Is that true of the month of October too? 1299

Mr. Cohen: Same objection.
Overruled.

A. Yes, I think that was true of October.
Q. Was it of September?

Mr. Cohen: Same objection.
Overruled.

A. I think the same would be true of September.
Q. Of August?

Mr. Cohen: Same objection.
Overruled.

1300 A. It is difficult to state whether any specific months showed a loss or a profit on our purchases and our sales, but for a period including August and prior to that time we were selling goods at a loss in a great many instances and in the aggregate it involved a loss.

Mr. Cohen: I move to strike out the last statement upon the ground that it involves the conclusion of the witness, a deduction from a large number of transactions.

Stricken out.

Q. Can you tell whether during the month of
1301 August, 1910, as a general rule the goods were being sold by the Schwab-Kepner Company at a price which did not exceed the purchase price paid therefor by the Schwab-Kepner Company?

Mr. Cohen: I object upon the ground that it assumes that the witness carried in his head the details of transactions for a month.

Overruled.

Question read.

A. In my opinion they were not sold at more than they cost.

1302 Mr. Cohen: I move to strike out all of the answers to the previous questions upon the ground that it now appears that the witness has been expressing his opinion instead of giving facts.

Answer to the last question stricken out but previous answers allowed to stand.

Q. Referring to the conversations that you have testified to as having taken place between you and Mr. Dockendorf when the maturing obligations were discussed can you tell whether or not at that or at any other time you had any talk with Mr.

Dockendorf about the Schwab-Kepner Company selling goods at a price not exceeding the purchase price or at a loss? 1303

Mr. Cohen: I assume that that calls for yes or no and not for the conversation. I object upon the ground that an answer yes might mean all or any conversation.

Overruled.

A. Yes.

Q. Was there one or more such conversations?

A. More than one.

Q. Now, will you please tell us what was said at the conversations, what was said by you and what was said by Mr. Dockendorf? 1304

Mr. Cohen: I ask that the time and place be fixed.

Mr. Wolf: Add to the question fixing time and place.

By the Master:

Q. How many conversations did you have in which this subject was discussed?

A. I could say that we had at least a dozen.

Q. During what period?

A. Several months prior to the bankruptcy.

Q. About when was the earliest one? 1305

A. I don't think I can state that.

Q. As near as you can state, about when was it?

A. I don't think that feature was brought up prior to within say four months prior to the receivership.

Q. You think that the first conversation was about four months prior to the receivership?

A. I think it came around within a period of that time.

1306 By Mr. Wolf:

Q. Now, will you please tell us what was said at this conversation, Mr. Kepner?

A. Mr. Dockendorf and I had discussed at these interviews our making losses on our sales and I can remember stating that we were losing on sales and hoping that conditions would warrant a change so that we could sell goods at a profit.

Q. At the interviews you have testified about as having taken place at which the purchase of goods was discussed by you and Mr. Dockendorf for the purpose of meeting maturing obligations
1307 was anything said at any of those interviews regarding the sale of the goods at a loss?

Mr. Cohen: I object upon the ground that the question improperly sums up the testimony.

Question withdrawn.

Q. At the various conversations that occurred between you and Mr. Dockendorf at which you discussed the meeting of the maturing obligations was anything said respecting the selling of goods at a loss?

A. I think I testified that we did mention that.

Q. As I understand your testimony at these con-
1308 versations that you had with Mr. Dockendorf respecting the meeting of maturing obligations it was suggested that goods be purchased; did you say anything to Mr. Dockendorf or did he say anything to you, as a reason for not purchasing the goods, that they were being sold at a loss?

Mr. Cohen: I object, first on the ground that it is leading and second on the ground that the first part of it draws a conclusion from the witness's testimony which is not

warranted and it is not a correct summing up of the evidence. 1309

Objection sustained.

Q. At these conversations at which maturing obligations were discussed what was said about not purchasing goods or about purchasing goods, if anything?

Mr. Cohen: I think the question has already been answered and I object upon that ground.

Overruled.

A. I don't think I get the question.

Q. At the conversations at which maturing obligations were discussed was anything, any reason why goods should or should not be purchased in order to meet maturing obligations given? 1310

Mr. Cohen: I object upon the ground that it calls for a reason.

Overruled.

Mr. Cohen: I further object upon the ground that it assumes that goods were to be purchased in order to meet maturing obligations which is a conclusion drawn by counsel which is not a proper summary of the evidence.

Objection sustained. 1311

Q. You have testified, Mr. Kepner, about the maturing obligations of the Schwab-Kepner Company, can you tell whether or not it was the general practice that the maturing obligations of the company would be in the form of a note or open account?

A. It generally occurred that they were about evenly balanced, there were about as many notes as open accounts. Of course, that is very rough.

Q. Did you have any conversation with Mr.

1312 Dockendorf at which the financial condition of the Schwab-Kepner Company was discussed? Answer yes or no.

A. Yes.

Q. When was the first conversation that you recall?

A. I guess that was taken up at our very first interview.

Q. September of 1908?

A. Yes.

Q. Do you remember having any such conversation within six months preceding the receivership?

A. Yes.

1313 Q. Can you fix the conversations by dates?

A. No.

Q. How frequently did you have conversations with him on that subject?

A. Not often.

Q. How many conversations did you have with him in the six months preceding the receivership on that subject?

A. I don't know that I testified that I did, if I did it was inadvertently, that we ever had a conversation for that purpose, to discuss our financial condition. The question came up and it undoubtedly was mentioned a half dozen times within a

1314 period of six months.

Q. Can you tell the first time that it was mentioned in the six months preceding the receivership?

A. The first time it was mentioned?

Q. Yes, in that period?

A. No, I can't recall.

Q. Can you tell whether or not you had any talk with Mr. Dockendorf at or about the time that Mr. Williams took his position with the Schwab-Kepner Company?

A. Yes.

Q. Will you please tell us what was said to Mr. 1315
Dockendorf by you and what was said by you to him at that interview on that subject?

A. Mr. Dockendorf mentioned to me that Mr. Williams was very pessimistic about the outlook of our concern and I think he asked me my opinion of the concern and I told him that I thought we would pull through all right. We were having a strenuous time, a hard time of it, I even mentioned that we were losing money but I gave it as my opinion that we would be able to pull through all right.

Q. What was said between you and Mr. Dockendorf on the subject of how and by what methods 1316
the Schwab Kepner Company was to pull through as you term it?

Mr. Cohen: The witness has already answered the question as to the time when Mr. Williams took his position stating a conversation in which it was said that Mr. Williams was very pessimistic about the situation. I don't think the witness understands that he is giving a conversation that took place when Mr. Williams took his position because at that time Mr. Williams could have known nothing about the situation.

Mr. Wolf: It was at or about that time? 1317

Mr. Cohen: I object on the ground that the questions are so general in fixing the time and place that it is impossible for us to meet them by any other witness.

Question read.

Mr. Cohen: I object unless the time and place are fixed.

Q. Did it occur at the same time and place—

Mr. Cohen: That assumes that there was such a conversation.

Objection sustained.

1318 Q. Mr. Kepner, when was this conversation you have just testified to?

A. Just after Mr. Williams came there.

Q. Now, can you tell us what was said between you and Mr. Dockendorf on the subject of how the Schwab-Kepner Company was to pull through as you call it, at that conversation?

A. My anxiety at that time was not relative to the solvency or insolvency of the Schwab-Kepner Company, it was the meeting of our obligations on time. We were having hard work and had for a long time had hard work to do that and I discussed with Mr. Dockendorf the possibilities of our being
1319 able to meet our obligations on time by buying our goods on longer terms of credit and selling them on shorter, carrying less merchandise or as little merchandise as possible in an inactive state.

Q. What did Mr. Dockendorf say?

A. Mr. Dockendorf agreed with me in that I think.

Q. Can you explain that in any more detail, as to the words "pulling through" what did you mean by that?

A. Well, of course, in our strained condition at any time it was imminent that some creditor might do something that would throw us into the hands
1320 of a Receiver and thus put us out of business. My idea of pulling through was being able to avert that.

Q. You testified about a creditor putting you into the hands of a Receiver, that being imminent—

Mr. Cohen: I object to that kind of distortion of the witness's testimony and making it fit the theory of counsel.

Question withdrawn.

Q. What did you mean by saying it was imminent, the fear of a creditor putting you into the hands of a Receiver?

A. What did I mean by that?

1321

Q. Yes.

A. Well, it was by the grace of our creditors that we got an extension of time on our obligations; when that grace was exhausted it was all up with us and we might any time strike a creditor who would not give us any grace.

Q. Do you mean that the open accounts when they came due were renewed, the terms of credit were renewed?

A. Well, yes, generally renewed in the form of a note. We would take up our accounts by note and I managed in some way to get a little extension of time.

1322

Q. And in that talk with Mr. Dockendorff were these facts referred to?

A. Yes, I think so.

Q. What did you and Mr. Dockendorff say on that subject?

A. I can remember Mr. Dockendorf saying at one time, "You have been able to put them off for a good long time, I suppose you can continue to do so."

Q. What, if anything,—did you ever have a conversation with Mr. Dockendorff respecting the credit of the Schwab-Kepner Company?

A. Yes.

1323

Q. Do you recall the first conversation that you had with Mr. Dockendorff on that subject?

A. I think that came around within a period of four to six months prior to the receivership.

Q. Will you tell us what was said at the first interview with Mr. Dockendorf on the subject of the credit of the Schwab-Kepner Company?

A. I don't think I can recall any specific first interview.

Q. Was it the subject of constant conference between you?

A. No, I wouldn't put it as strong as that.

1324 Q. Did you have many interviews on the subject?

A. It was mentioned frequently in our conversations.

Q. What was said between you and Mr. Dockendorff on the question of the credit of the Schwab-Kepner Company?

A. Mr. Dockendorff asked me if our credit had been impaired and I said, "No, I don't think that it has. I think that our credit is just as good as it ever was."

Q. What else was said at that time?

A. I don't recall anything specifically.

Q. Was anything said as to how the credit of
1325 the company was to be maintained?

A. No. Well, I will amend that. I may have mentioned in trying to get money that if we didn't meet our obligations reasonably on time our credit would be withdrawn which would mean a suspension of business.

Q. Will you please state again the first interview you can recall having with Mr. Dockendorf when you went over the list of maturing obligations with him?

Mr. Cohen: What list?

Mr. Wolf: The list which he has referred to.

1326

Mr. Cohen: I object, maturing obligations undoubtedly change from time to time and the witness testified, my understanding was, not that he gave a list at any time but as they matured he discussed with Mr. Dockendorff the amount he would need to meet them.

Question withdrawn.

Q. State what you said to Mr. Dockendorf when you first discussed with him the maturing obligations of the company?

A. Well, in our discussion of the maturing ob- 1327
ligations when it referred to those immediately maturing Mr. Dockendorf would ask me if there was any way of postponing payment of those by the issue of notes or by some extension of credit and I generally answered by saying that I had done all I could in that respect and in discussing the future maturities we would discuss the amount of sales necessary to cover the money that we withdrew from Dockendorf to pay these bills and necessarily we would need to purchase and whether I would be able to purchase and sell that amount of stuff, that was the drift of our conversation.

Q. What, if anything, did Mr. Dockendorff say 1328
to you on the subject of the purchasing and selling of goods?

A. Mr. Dockendorff would draw up a scheme of what was necessary for us to perform and also as to what money we would have to collect from our customers to get the benefit of the equity in the accounts which we had pledged to him.

Q. Can't you amplify that? You say that he drew up a scheme of what you would have to perform, what do you mean by that?

A. He would say it is necessary to collect so much per day or per week, your sales must be so much per day or per week. 1329

Q. How about purchases?

A. The purchases would have to be in proportion to the sales. I think that embraced the entire thing.

Q. What did you do when that was proposed?

A. I agreed with him that that was what was necessary.

Q. And what was done?

A. We did or endeavored to do just that, buy and sell and collect.

Q. Now, can you tell whether or not you had

1330 more than one such conversation with Mr. Deckendorff and if more than one state how many?

A. Well, we had more than one and I suppose the matter was mentioned twelve or twenty times.

Q. In the same general way?

A. In the same general way, yes.

Q. Over what period did that extend?

A. I should say it was a period of four to six months prior to the receivership. I don't mean to say that it occurred four months prior to the receivership, I mean that it was within the period of from four to six months prior to the receivership.

1331 Recess Taken.

After Recess.

JOHN B. KEPNER, examination resumed.

By Mr. Wolf:

Q. Can you tell us what the general condition of the Schwab-Kepner Company account with the bleacheries was during the six months preceding the receivership?

1332 Mr. Cohen: I object, involves a conclusion from a number of items and elements, the best evidence is the actual figures from day to day.

Question withdrawn.

Q. What percentage of the cost value of the goods did the banks or other institutions loan against the goods at the bleacheries?

Mr. Cohen: I object unless it appears whether or not the agreements are in writing. If the agreements are in writing then I submit that the agreements are the best

evidence. I think that it already appears 1333
that the agreements are in writing.

Question withdrawn.

Q. What was the general custom with regard to the loans of the banks against the goods respecting the percentage of advances against the cost value of the goods?

Mr. Cohen: I object, it assumes that it was done by custom.

Objection sustained.

Q. Was there any general custom, system or rule respecting the advances made by the banks to the Schwab-Kepner Company? 1334

Mr. Cohen: I object upon the ground that it calls for hearsay as well as knowledge.

Overruled.

A. There was.

Master: How do you know?

A. I signed an agreement.

Mr. Cohen: Were the agreements in writing?

A. Yes.

Q. Can you tell us what the condition or situa- 1335
tion was respecting the accounts of the Schwab-Kepner Company with the various bleacheries within the four months preceding the receivership with respect to the amount of goods which the Schwab-Kepner Company withdrew from the bleacheries?

Mr. Cohen: I object upon the ground that it calls upon the witness to give data of the financial relations of the institutions and for the contents of a written instrument as to

1336 which the written instrument is the best evidence.

Objection sustained.

Q. Did it or did it not, Mr. Kepner, happen that the bleacheries refused to ship goods which the Schwab-Kepner Company requested them to ship on orders received by it from its customers?

Mr. Cohen: I object upon the ground that the question is too general and it is leading.

Objection sustained.

Q. Within the four months preceding the bankruptcy.

1337

Mr. Cohen: I object to that.

Objection sustained.

Q. After the transmission by the Schwab-Kepner Company to the various bleacheries of orders to ship goods to the customers of the Schwab-Kepner Company what was the next step in the general routine of the business?

Mr. Cohen: I object, the witness has already described the routine, he has testified in detail that the bleacheries would determine whether or not there was sufficient

1338 equity to justify the shipping of the goods and if not they would notify the Schwab-Kepner Company.

Objection overruled.

Question read.

Mr. Cohen: I further object upon the ground that it assumes that there was a general routine of the business unchangeable during the entire period in which the Schwab-Kepner Company did business with Mr. Dockendorff.

Objection overruled.

A. I don't know as I can answer any more fully than that the goods were either shipped or they were not shipped. 1339

Q. Under what circumstances did the bleacheries decline to ship the goods?

Mr. Cohen: I object on the ground that it calls for hearsay and also on the ground that it has already been answered.

Overruled.

Question read.

A. When the amount of collateral, merchandise, on hand at the bleachery was insufficient as compared with the loan on the merchandise.

Q. Can you tell whether or not the refusals of the bleacheries within the four months preceding the receivership were frequent or infrequent? 1340

Mr. Cohen: I object on the ground that it involves the conclusion of the witness.

Objection overruled.

A. They were frequent.

Q. Did you have any conversation with Mr. Dockendorf on the subject of the refusal of the bleacheries to thus ship goods?

A. Yes, that matter was discussed.

Q. Will you please state when?

A. It was during—the first time I think was during Mr. Hardy's tenure of office up there. 1341

Q. That was during May and June, 1910?

A. Yes.

Q. Now, will you please give us the conversation that you had with Mr. Dockendorff on that subject?

A. As I recall it Mr. Hardy called Mr. Dockendorff's attention to the fact that the bleacheries were refusing to ship and Mr. Dockendorff wanted to know the amount of goods that were not shipped owing to the bleacheries' objections and that

1342 amount was ascertained. I don't recall anything further, any further conversation about that exact point.

Q. Now, can you tell us what amount was mentioned between you and Mr. Dockendorff?

Mr. Cohen: I object on the ground that it assumes a definite amount.

Question withdrawn.

Q. Was any amount mentioned?

Mr. Cohen: This refers to the first conversation that you said took place in May or June, Mr. Kepner.

1343

A. I think we mentioned an amount. I don't know that we knew the exact amount at that time.

Q. What amount was mentioned?

A. I don't recall the amount.

Q. Can't you approximate it?

A. No.

Q. Was the amount mentioned at any subsequent conversation?

A. The amounts varied from time to time and they were mentioned frequently.

Q. Can you tell any conversation when any

1344 specific amount was mentioned?

A. I can't fix any specific time of any specific interview when the amount was mentioned, no.

Q. Can you name any figure which you stated to Mr. Dockendorff represented the amount which the bleacheries declined to ship without fixing any definite time?

Master: Answer that yes or no.

A. Yes.

Q. Now, can you fix the time, approximately?

A. I can fix approximately the time of one conversation, yes.

Q. When was that?

1345

A. Within a week of the Receivership.

Q. What was the figure that was named?

A. The aggregate amount was $125,000.

Q. Did you ever have any conversation with Mr. Dockendorff in which Mr. Dockendorff suggested what, if anything, should be done by the Schwab-Kepner Company, in order to enable the bleacheries to make shipments of the goods?

Mr. Cohen: May I ask whether this calls for a conversation subsequent to this one at which the amount of $125,000 was mentioned?

1346

Mr. Wolf: I don't know what time it is, myself. I am going to fix it.

A. Yes.

Q. How many conversations did you have with Mr. Dockendorff on that subject?

A. Oh, that was frequently mentioned.

Q. Can you tell us whether or not you had conversations with Mr. Dockendorff on that subject in the months of June, July and August, 1910?

A. I can answer that in this way, that it was discussed as soon as Mr. Dockendorff was aware of what we call the bleachery overdraft, in other words the goods not shipped by the bleachery.

1347

Q. When did you inform Mr. Dockendorff of that, during Mr. Hardy's regime?

A. That is my recollection, that Mr. Hardy informed Mr. Dockendorff of that.

A. And then Mr. Dockendorff spoke to you about it?

A. Yes.

Q. And you fix that as having occurred in June, 1910?

A. Yes.

Q. Will you please tell us the conversation which

1348 you had with Mr. Dockendorff, if any at that time, respecting Mr. Dockendorff's suggestion as to what should be done to enable the bleachery to ship the goods?

Mr. Cohen: I object upon the ground that it assumes that Mr. Dockendorff made a suggestion.

Overruled.

Question read.

A. I can't recall the specific conversation, except that Mr. Dockendorff insisted that the bleachery situation be improved.

1349 Q. What did Mr. Dockendorff say to you, if anything, as to how it should be improved?

A. I can't recall that he made any specific suggestions except that we so arrange our business that our shipments away from the bleacheries should not be in excess of our shipments in, and should rather be less than our shipments in to the bleacheries, so that the bleachery overdraft would decrease.

Q. Was that the subject of discussion between you and Mr. Dockendorff at various times subsequent to June, 1910?

A. Yes.

1350 Q. Can you fix any further conversation that you had with Mr. Dockendorff, if any, on that subject?

A. No, I think I have covered the ground fully as far as I can recall it.

Q. At the subsequent conversations that occurred between you and Mr. Dockendorf, what did Mr. Dockendorf say to you, if anything, in addition to what he said at this first interview as to how the bleachery overdraft should be decreased?

A. There was nothing else to do. There was no other solution of the problem than that either our loan be reduced with the banks who loaned the

money on the merchandise at the bleacheries and thus reduce the bleachery overdraft or else that our shipments of merchandise into the bleacheries should exceed our shipments of merchandise out. 1351

Master: Is this what Mr. Dockendorff said? The question asked for what Mr. Dockendorff said. Are you stating what he said?

A. Well, yes, I think that is the way Mr. Dockendorff said it.

Q. Which of the two solutions did Mr. Dockendorff suggest should be adopted by the Schwab-Kepner Company? 1352

Mr. Cohen: I object; it assumes that Mr. Dockendorff suggested one or the other solution.

Question withdrawn.

Q. What, if anything, did Mr. Dockendorff say as to which solution should be adopted?

Mr. Cohen: I object to that on the ground that it assumes that Mr. Dockendorff suggested one or the other.

Objection sustained.

Q. Did Mr. Dockendorff say anything as to which solution of the two that you have mentioned should be adopted by the Schwab-Kepner Company? 1353

Mr. Cohen: I object on the ground that the witness has given the entire conversation and has stated that that was all that was said, that the bleachery situation should be improved.

Overruled.

Question read.

A. No, I don't think Mr. Dockendorff expressed any preference.

1354 Q. Did Mr. Dockendorff say anything to you with respect to the price at which the Schwab-Kepner Company should sell its goods?

A. No.

Q. Did Mr. Dockendorff have any conversation with you with respect to the Schwab-Kepner Company delivering to him collateral or additional collateral for the loans which he was making from time to time to the Schwab-Kepner Company?

Mr. Cohen: I object unless the time is fixed, it is entirely too vague.

Mr. Wolf: I refer to collateral other than accounts receivable and merchandise.

1355

A. Yes.

Q. When did you have such a conversation with him?

A. I think it was about May.

Q. Please tell us what was said?

A. At about that time it developed that quite a large amount of credits should have been passed for customers that were not passed and we discovered at that time the amount of those credits. That of course vitiated some of the accounts which Mr. Dockendorff held as security and after crediting these accounts it made our loan with Mr. Docken-

1356 dorff larger than was warranted by the good collateral. Mr. Dockendorff called on me to ascertain whether there was anything else we could give him as security for these overdrafts. At that time we gave him a second lien on the merchandise at the bleacheries and I gave Mr. Dockendorff some personal property I had as security for the loan.

Q. What did the personal property which you had consist of?

A. It consisted of a second mortgage on my wife's property at Cranford.

Q. Cranford, N. J.?

A. N. J., and I also transferred to him some min- 1357
ing stock which I owned.

Q. Which you owned individually?

A. Yes.

Q. Was that everything that you owned individually?

A. That was everything, yes.

Q. How many conversations did you have with Mr. Dockendorff respecting the transfer to him of the equity in the goods at the bleacheries?

A. I don't think there was more than one or possibly two. I think probably only one.

Q. What did you do when Mr. Dockendorff asked for the security?

1358

A. Why I gave it to him as far as I could.

Q. What did Mr. Dockendorff say, if anything?

Mr. Cohen: Are you still referring to the May conversation?

A. Yes.

Q. What, if anything, did Mr. Dockendorff say as to what he wished you—why he wished to have the second mortgage on your house and the mining stock and the transfer of the equity of the Schwab-Kepner Company in the merchandise at the bleacheries?

Mr. Cohen: I object on the ground that it 1359
assumes that Mr. Dockendorff said that he wished it.

Question withdrawn.

Q. What, if anything, did Mr. Dockendorff say as to why he wished to have the additional collateral.

Mr. Cohen: I object, it assumes that Mr. Dockendorff said that he wished to have the additional collateral.

Question read.

Mr. Cohen: I object upon the ground that

1360 it assumes that "anything else" meant additional collateral.

Question reframed.

Q. What, if anything, did Mr. Dockendorf say as to why he wished to have any additional security?

A. No, there wasn't anything further.

Q. What was said on the subject of the overdraft?

Mr. Cohen: I object upon the ground that the witness has already answered the question.

1361 Objection sustained.

Q. Have you given the entire conversation, Mr. Kepner?

A. As far as I can recall it I have given it.

Q. Did you agree immediately to give Mr. Dockendorff this security?

A. Yes.

Q. Did Mr. Dockendorff subsequent to this time ever ask you or the Schwab-Kepner Company to transfer to him any accounts?

Mr. Cohen: I object upon the ground that it is leading and upon the ground that it is

1362 too general.

Question withdrawn.

Q. Did you ever have any conversation with Mr. Dockendorff subsequent to this interview that you have last testified about concerning the transfer to him of outstanding accounts of the Schwab-Kepner Company?

Mr. Cohen: I object upon the ground that it is too general, the business between these parties was the transfer of outstanding accounts.

Question withdrawn.

Q. Did you ever have any conversation with Mr. Dockendorff subsequent to May, 1910 concerning the quantity of outstanding accounts which should be created by the Schwab-Kepner Company and transferred to him? 1363

Mr. Cohen: I object to that portion of the question which states "should be created."

Overruled.

Mr. Cohen: May I ask what is meant by the word created?

Mr. Wolf: I mean what the question shows it means.

Mr. Cohen: I object to the question upon the ground that the word create may mean in the interest of both parties or it may mean in the ordinary course of business. 1364

Overruled.

Question read.

A. Yes.

Q. When was the first conversation that you can recall on that subject?

A. I cannot recall the time. I cannot place it at any time that I can think of, it was probably at the time we were considering our maturities as I testified before.

Q. Can you approximate the time at all? 1365

A. I can't approximate it any more closely than I did before. It was after May, between May and October or November.

Q. Was it a matter of frequent or infrequent discussion?

A. It was rather frequent.

Q. Will you please tell us what was said between you and Mr. Dockendorff on that subject?

A. We had a list prepared; Mr. Dockendorff had a list prepared from our books of the maturities, our obligations which we had to meet and we

1366 would then go to his office and confer as to how we were to meet them. As we had only one source of meeting them and that was Mr. Dockendorff we would figure the amount of sales necessary for us to make in order to enable us to draw enough to meet this obligation.

Q. Did you in or about the months of January or February, 1910 give Mr. Dockendorff a statement of the financial condition of the Schwab-Kepner Company?

A. Yes.

Mr. Wolf: We ask the other side to produce it.

1367

Q. Is this statement produced by Mr. Dockendorf the statement about which you have just testified?

A. Yes.

Q. By whom is it signed?

A. By me.

Offered in evidence.

Received in evidence and marked Exhibit 1191, February 17th, 1911.

The Exhibit reads as follows:

"THE SCHWAB-KEPNER COMPANY

1368 Commission Merchants

66-68-70 Leonard Street.

February 17th, 1910.

January 1st, 1910.

Resources

Cash	$27,737.27
Bills Receivable,	42,901.46
Accounts Receivable,	265,278.03
Merchandise,	285,947.85
Fixtures,	2,679.00
Total	$624,563.61

Liabilities. 1369

Bills payable,	$288,052.89
Accounts payable,	180,184.40
Capital,	75,000.00
Surplus,	81,326.32
Total	$624,563.61

(Signed) THE SCHWAB-KEPNER COMPANY,
J. B. Kepner, Pres."

Q. Mr. Kepner, was a copy of this paper marked Exhibit R101 of this date furnished by the Schwab-Kepner Company to the commercial agencies?

Mr. Cohen: I object, immaterial, irrelevant and incompetent and not within the issues of this case. 1370

By the Master: I will receive this evidence at this time upon the assurance of counsel that they intend to show that Mr. Deckendorff had knowledge of the fact that this statement was given to the commercial agencies. If no testimony is hereafter produced to establish this I will entertain a motion to strike out this testimony.

Objection overruled.

A. Yes, we did.

Q. Which agencies? 1371

A. Dunn and Bradstreets.

Q. Any others?

A. We gave it to anyone that asked for it and I think we probably had requests from two or three minor agencies.

Master: Was that the last statement that was given out?

A. That is the last statement, yes.

Q. Now, Mr. Kepner, I call your attention to

1372 two items among the items of resources as follows: Bills receivable $42,901.46 and accounts receivable $265,278.63, was any portion of the bills and accounts receivable shown on this statement assigned to Mr. Dockendorf, if you know?

A. Yes.

Q. What portion of the bills and accounts receivable were assigned?

A. A very large proportion.

Mr. Cohen: I move to strike that out as being too general and too indefinite.

Motion denied.

1373 Q. Can you tell us whether or not substantially all the collectable accounts of the Schwab-Kepner Company on January 1st, 1910 had been assigned to Dockendorff?

Mr. Cohen: I object, leading.

Objection sustained.

Q. What accounts had not been assigned to Dockendorff on January 1st, 1910?

A. I can't specify any specific accounts except that there were some that were not assigned.

Q. Can you give an approximate amount, did they exceed $10,000 or would it be less than that?

1374 A. I should say it would be a larger amount than that.

Q. Was it larger than $25,000?

A. I think that would cover it probably.

Q. You think $25,000 would cover it?

A. Yes.

Q. At the time of the giving of this statement can you tell what portion of the merchandise shown on Exhibit R101 of the value of $285,917.85 was subject to the liens of the banks and the bleacheries?

Mr. Cohen: That question calls for yes or no.

Question read.

A. Is that supposed to be an exact amount? 1375
Q. Approximately.

Mr. Cohen: I object on the ground that it involves a speculation on the part of the witness.

Overruled.

A. Yes.
Q. Approximately what amount?
A. I can tell you by looking at the figures.
Q. All right, look at the figures.
A. I should say that approximately $225,000 to $250,000.

Mr. Cohen: Of what? 1376

A. Of the merchandise was pledged.

By the Master:

Q. Does the indebtedness of the Schwab-Kepner Company to Mr. Dockendorff appear on that statement anywhere?
A. Yes.
Q. Under what item?
A. Bills payable.
Q. That includes all of the indebtedness to Mr. Dockendorff on January 1st, 1910?
A. Yes. I can't state whether that is included in bills payable or accounts payable. Probably bills payable. 1377

By Mr. Wolf:

Q. Can you tell whether during the month preceding the receivership the Schwab-Kepner Company sold any of its goods in the gray?

Mr. Cohen: I object, immaterial and irrelevant and not binding upon Mr. Dockendorf.

Overruled.

Question read.

1378 A. Yes.

Q. How much worth?

Mr. Cohen: I object upon the ground that it calls for a conclusion of the witness from a considerable number of transactions.

Overruled.

A. I can't state the amount, it was considerable.

Q. Give us your best recollection as to what the amount was?

Mr. Cohen: I object upon the ground that it appears that the transactions were more than—

1379

By the Master:

Q. Was there more than one such sale?

A. Yes.

Q. How many were there?

A. Numerous sales.

By Mr. Wolf:

Q. Will you tell us, according to your best recollection the amount of gray goods sold by the Schwab-Kepner Company in the month preceding the receivership?

1380 Mr. Cohen: Objected to on the ground that it involves the conclusion of the witness based upon transactions now appearing to be numerous.

Overruled.

A. I can't estimate the amount.

By the Master:

Q. Where can the amount be ascertained?

A. Very easily from the books.

Q. Do the books show what goods were sold in the gray?

A. Yes.

Q. They are distinguished in that way from the other goods? 1381

A. They wouldn't be designated gray, if they are sold as a style they are finished, if the construction of the goods is mentioned they are gray.

By Mr. Wolf.

Q. Did you have any conversation with Mr. Dockendorff about the selling of goods in the gray, answer it yes or no.

A. Well, we mentioned gray sales, yes.

Q. When, for the first time?

A. I can't recall.

Q. Was that discussed in the month preceding the receivership? 1382

Mr. Cohen: I object, it assumes a conversation.

Q. Was that talked about in the month preceding the receivership?

A. Yes, I think it may have been mentioned.

Q. What was said between you and Mr. Dockendorff on the subject of the sale of gray goods?

A. It was only mentioned, Mr. Wolf, in connection with other matters in connection with our business. It was a quick way of realizing money.

Mr. Cohen: I move to strike out the answer upon the ground that it is a conclusion of the witness from the conversation. 1383

Motion denied.

Q. In order that your testimony shall not appear as a conclusion and therefore be objectionable, will you please state the substance of what was said by you to Mr. Dockendorff and what he said to you on the subject of the sale of goods in the gray?

A. I can't recall any specific conversation as to the sale of gray goods. It was of course, mentioned in the course of Mr. Dockendorf's several years' con-

1384 nection with our business. He knew more or less about the various features of it and in discussing the amount of business we could do and the quickness with which we could turn out business by the sale of gray goods naturally came up in the course of conversation. We would naturally turn our money faster in the sale of gray goods because it wasn't necessary to finish them, we save that time and the terms of payment on gray goods were usually quicker than on finished goods.

Q. Was that a talk that you had with Mr. Dockendorff in the month preceding the receivership?

1385 A. Yes, I think we probably mentioned those matters at that time.

Q. Was it also a subject of conversation between you and Mr. Dockendorff previous to that time?

A. Yes.

Q. On what terms did you sell gray goods?

A. Generally ten days.

Q. Can you tell whether or not the price at which these gray goods were sold in November of 1910, was at a price less than the cost price or purchase price thereof, paid by the Schwab-Kepner Company?

1386

Mr. Cohen: I object upon the ground that it is a conclusion from various transactions the best evidence of which is from the books.

Overruled.

A. It is difficult to answer that question. I could say that we sold the goods under the market but we had goods coming in at the market and on old contracts under the market so that whether they were sold actually at less than what we paid for them or not it is impossible for me to determine at this time.

Q. What do you mean by under the market? 1387

A. There is a very fixed market on gray goods every day, varying from day to day. In our business we customarily buy gray goods ahead of time, sometimes for a period of six months to twelve months and we had contracts with mills which were coming in being delivered to us at lower than the market price, so that we might sell the goods at under the market and still not make a loss, the goods purchased more recently or at the market or possibly above the market would be sold naturally at a loss.

Q. Were these gray goods that you sold in November, 1910, sold below the market? 1388

Mr. Cohen: I object; the witness has already stated that he cannot answer that question.

Overruled.

A. Yes.

Q. Now, what do you mean by below the market?

A. In that case I meant by the market, quotations offered by mills or by the mills' representatives, brokers on those cloths.

Master: You mean the market price on the day of sale? 1389

A. That is it.

Q. Did you have any conversation with Mr. Dockendorff respecting the sale of these gray goods below the market?

A. No.

Q. After the goods were sold did you have any conversation with respect to the sale of them with Mr. Dockendorff?

Mr. Cohen: Objected to on the ground that it is immaterial and irrelevant.

Overruled.

1390 A. Did I have any conversation with Mr. Dockendorff relative to selling these goods below the market?

Q. After the goods were sold.

A. I think I testified that I had no conversation with Mr. Dockendorff relative to selling these below the market. I amend that and say that I have mentioned to Mr. Dockendorff the selling of these goods at below the market, whether I mentioned it in that way as below the market or not I can't recall, but I do recall mentioning to Mr. Dockendorff the sale of the goods at a loss and when I speak of a loss I mean selling below the
1391 market because that is the way we figure, that is a basis of our figuring up there, we figure on the daily market which governs the price at which we bought them and we sell based on to-day's market, that is what it would cost to replace.

Q. What did Mr. Dockendorff say when you told him that?

Mr. Cohen: May I interrupt to ask whether the witness means that he told Mr. Dockendorff after the sales were made or before?

A. Well, I frequently discussed with Mr. Dock-
1392 endorff the sale of goods at a loss. We mentioned it, we knew that we were doing it and it was impossible to avoid it.

By the Master:

Q. In the month of November, you said you had a number of such sales?

A. I didn't intend to convey that impression that that month was a very bad month, although I think it probably was.

Q. Were you selling goods in the gray right along, every month?

A. Yes, we have made a practice of doing that ever since we began. 1393

By Mr. Wolf:

Q. Were you selling below the market?

A. Well, our price in selling gray goods, unless there is a shortage in a certain cloth, necessarily is lower than the mills' price because we sold to our competitors and we couldn't sell to our competitors at as good a price from the same source of supply, they preferred to buy from the mills, at the same price.

Q. Then, when you did sell gray goods it was below the market?

A. Yes, unless there was a shortage in a certain class of goods, that no one else had it, then we could get full price. 1394

By Mr. Cohen:

Q. Do I understand you to say that this practice of selling goods in the gray is a practice which has existed in your business ever since you started?

A. Yes.

Sworn to before me this 17th day of February, 1911. 1395

Adjourned to Friday, February 24th, 1911, at 10:30 A. M.

1396 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff & Company, before Edwin G. Adams, Referee in Bankruptcy, as Special Master, at No. 165 Broadway, New York City, on Friday, February 24th, 1911, at 10:30 A. M.

1397

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and JAMES N. ROSENBERG, Attorneys for Trustee.

JOHN B. KEPNER, recalled.

Direct examination by Mr. Wolf:

1398 Q. When you were on the witness stand at the adjournment you were testifying about the sale of goods in gray and you testified at page 66 of the last session, "Q. What did Mr. Dockendorff say when you told him that? A. Well, we frequently discussed with Mr. Dockendorff the sale of goods at a loss, we mentioned it, we knew that we were doing it and it was impossible to avoid it." Can you state what was said with respect to the impossibility of avoiding this loss?

A. I remember stating that it was necessitated by the conditions of trade, but I, of course, didn't

expect that it would continue forever and was con- 1399
tinually looking for a change in the conditions which would permit us to do business at a profit.

Q. Can you testify, Mr. Kepner, with respect to the quantity of goods in gray sold within the period from August 1st, 1910, down to the date of the receivership and sales of gray goods sold within the same period previous to August 1st?

Mr. Cohen: I object upon the ground that it calls for the conclusion of the witness from a number of transactions, calls for statistics.

Master: Unless it appears that the books and records of the concern would not show the sales of gray I think that the objection 1400
should be sustained.

Mr. Wolf: Does your Honor hold that the books of the Schwab-Kepner Company would be competent to show that? The point I apprehend is that when the books are produced Mr. Cohen will object because they are not binding upon Mr. Dockendorff and up to now I have been under the impression that possibly that objection is a good one and the proper way of proving it is by the testimony of those who know about it and not by the books.

Master: I think that the entries of the 1401
contemporaneous transactions would be the best evidence.

Mr. Wolf: We offer in evidence the books of the bankrupt corporation so far as they relate to the quantity of gray goods sold in the period between August 1st, 1910, and the date of the receivership and the quantity of gray goods sold in the same period previous to August 1st.

Mr. Cohen: I should like to see the books and assume, of course, that the statistical

1402 evidence of the quantity cannot be established by a witness who only has general knowledge of the transactions of the business, and I assume, of course, that if it be shown that the books were kept in the regular course of business and it is possible to ascertain the facts from them they will be admissible for the purpose of establishing those facts and when the books are produced and I have an opportunity to see them, I have never seen them, to ascertain how accurate they are I shall make no objection to their introduction.

1403 Mr. Wolf: In that case we will suspend on that question for a time.

Q. Do you recall having any conversation with Mr. Dockendorff in the year 1910 respecting the statement that you issued to the mercantile agencies as of January 1st, 1910?

Mr. Cohen: I object unless the time is more definitely fixed.

Mr. Wolf: I have only asked if he recalls having any.

Objection overruled.

1404 A. Yes.

Q. When?

A. I should say within a period of three months or four months or less than that possibly, from January 1st, 1910.

Master: Before or after?

A. After, of course.

Mr. Cohen: You mean some time in March or April?

A. I know it occurred around the first quarter of the year 1910.

Q. Was the statement issued to the agencies sim-

ilar to the one which has been marked Exhibit 1405
R101 on pages 56 and 57 of the record?

A. Yes.

Q. Will you please state what conversation you had with Mr. Dockendorff respecting the statement issued by your company to the agencies?

Mr. Cohen: Is this the conversation that took place in March or April?

A. Yes. I recall that Mr. Dockendorff mentioned to me that the agencies were not reporting favorably on our concern, that his banks were criticising us somewhat and mentioned the fact that our credit was being questioned and I remember stating to Mr. 1406
Dockendorff that I had seen Bradstreet's relative to a statement which they had issued about us which was not satisfactory and that they had agreed to correct it in some respects. I think that is probably the gist of the conversation as I recall.

Q. Did you tell Mr. Dockendorff anything further respecting the statement which the Bradstreet Company has issued which you said you had arranged with them to recall?

A. Yes. In a statement which they issued they implied a doubt as to the correctness of our figures.

Q. Which figures, Mr. Kepner, did you tell Mr. Dockendorff?

A. Well, it referred to the net worth of the con- 1407
cern as reported in the statement.

Q. Of January 1st?

A. Of January 1st, and I saw that statement and took it up with the manager of the main office of the Bradstreet company and called in the man who had written the report and he agreed to withdraw that portion of the statement which seemed to cast a doubt on the correctness of our figures.

Q. Did you tell Mr. Dockendorff to how many persons the recalled report of Bradstreet had been delivered?

1408 A. Yes, I think I did.

Q. What did you say to him?

A. If I remember right the manager reported to me that he asked the man who wrote up the report to how many people this statement had been issued and their records showed, I think, about sixteen people, and he instructed the reporter at that time to send out a corrected report to each one of these people who had received a former report, omitting the remark of the reporter in which they expressed a doubt as to the correctness of the figures.

Q. Did you tell that to Mr. Dockendorff?

A. Yes, I mentioned it to him.

1409 Q. What did Mr. Dockendorff say to you on the subject of the statements issued by the mercantile agencies?

Mr. Cohen: I object; it should say in this conversation; what did he say in this conversation?

A. Well, I don't know as he made any particular remark about it. I think, if I remember rightly, he said, "I mm," a very characteristic remark of Mr. Dockendorff's, he frequently says that before he says anything else. I don't recall that he made any comment on it.

1410 Q. At the commencement of your relations with Mr. Dockendorff did you have any conversation with Mr. Dockendorff regarding the National Bank of North America of Philadelphia?

A. Yes, I undoubtedly mentioned the Bank of North America to Mr. Dockendorff at the time or shortly after our opening negotiations.

Q. What conversation did you have with him on that subject at that time?

A. I remember telling him that we had an arrangement with them for borrowing money on merchandise at the Cold Springs Bleachery.

Q. Was anything said between you and Mr. Dockendorff respecting the notification of debtors in which the name of the Bank of North America was mentioned? 1411

Mr. Cohen: When?

Mr. Wolf: At this time. I don't change the time, Mr. Cohen, unless I say so.

A. You refer to the conversation that took place at or about the time that we began with Mr. Dockendorff.

Q. Yes.

Mr. Cohen: Will you fix the date at this point? 1412

Q. What year and month was that, about?

A. I have testified as to that but I really can't recall.

Q. About September, 1908, wasn't it?

A. I should say that was right approximately.

Q. What conversation did you have on that subject at that time?

A. I can't recall whether we had any conversation at that time on that subject.

Q. Can you recall any conversation that you had with Mr. Dockendorff on that subject at all? Answer yes or no.

A. Yes. 1413

Q. When?

A. Well, that subject came up more or less frequently in our business.

Q. Do you recall having any conversation with Mr. Dockendorff respecting notification of debtors, that is that the accounts of debtors had been assigned to Mr. Dockendorff?

A. Yes.

Q. When?

A. Why, we discussed that subject more or less frequently.

1414 Q. Can you fix any specific time when it was discussed?

A. No, I can't say that I can. I can't recall any specific time.

Q. Can you tell us what was said at any of these interviews?

A. I think the matter that you are asking about is the notification of debtors, is it not?

Q. Yes.

A. Well, I probably misunderstood the drift of your question. The notification of the debtors of the Schwab-Kepner Company of the assignment of accounts was never brought up by itself as a mat-
1415 ter of discussion after we had first settled on that point. Mr. Dockendorff's usual method of doing business is as I understand it not to notify debtors, there was no exception made in our case and it wasn't brought up for discussion.

Q. Did you have any conversation with Mr. Dockendorff respecting deposits of checks from Mr. Dockendorff in the Bank of North America?

A. Yes.

Q. When?

A. That subject was brought up more or less frequently.

Q. Can you fix any specific time when that was
1416 mentioned?

A. No, I can't. It was quite frequently.

Q. Can you tell us what was said?

A. Well, I can recall stating to Mr. Dockendorff that I would prefer not to deposit his checks in the Bank of North America inasmuch as I had never notified them that we had assigned accounts and I knew that Mr. Mitchmor of the Bank of North America did not approve of that method of doing business.

Mr. Cohen: Did you ever tell Mr. Dockendorff that Mr. Mitchmor did not approve?

A. Yes, I think so. 1417

Q. Did you tell Mr. Dockendorff what position he held in the Bank of North America?

A. Yes.

Q. What did you say?

A. I said he was President. I think he knew it before I told him.

Q. Did you say anything as to why Mr. Mitchnor did not approve of your assigning accounts?

A. Yes, I remember stating that he, giving it as my opinion that he was an old fashioned banker and didn't approve of that method of doing business.

Cross examination by Mr. Cohen: 1418

Q. How long have you, personally, been engaged in this general line of cotton converting business?

A. About ten or twelve years.

Q. And how long were you in business for yourself before the Schwab-Kepner Company was formed?

A. Before the corporation was formed I did business with Mr. Schwab as a partner for I think two years.

Q. And before that time were you in business for yourself?

A. No, I was never in business for myself before 1419
that.

Q. When was your partnership formed?

A. I can't give you the date. I have it, it is available.

Q. Approximately in what year?

A. Well, figuring back, we were incorporated in 1908 I think, and I think our co-partnership lasted before that about two years.

Q. So that your co-partnership began about in 1906?

A. That may be inaccurate to a year or so, but I think it is about right.

1420 Q. Did the corporation succeed to the business of the co-partnership?

A. Yes.

Q. Did the co-partnership have a capital?

A. No—yes we had a little money. Mr. Schwab had some money.

Q. When you became the Schwab-Kepner Company had its capital increased?

A. Yes.

Q. Then you had made money during the period that you were a partnership?

A. Yes.

Q. And did the partnership have capital when
1421 the business was turned over to the corporation?

A. Yes.

Q. During the time that you were a co-partnership did you do the same general kind of a business that you subsequently did as a corporation?

A. Yes, sir.

Q. Now, at page 7 you stated that your business consisted of buying cotton goods in an unfinished state and finishing them, converting them at finishing plants and selling them, and later on in your testimony you stated that you had bought goods in the gray and sold them in the gray and that was a practice which had existed in your business ever
1422 since you started. How did it happen then when you first answered the question in regard to the nature of your business that you excluded as part of your definition the business of buying and selling goods in the gray, without finishing?

A. I omitted that because it really is no part of the legitimate converting business. The gray goods represented originally the speculative feature of our business. We sometimes bought more than we could sell in our usual output of finished goods and we frequently sold the surplus to our competitors. So you can see that it isn't really a regular part of

the business of the converting of cotton—converting 1423
means the changing of the gray to the finished state.

Q. Do you regard the buying and selling the goods in the gray as illegitimate?

A. Well, it naturally is speculative business.

Q. I didn't ask you whether it was speculative or not. I asked you whether it was illegitimate?

A. No, there is nothing illegitimate about it.

Q. You mean simply that it isn't a business that cotton converters usually engage in?

A. Yes.

Q. But there is nothing illegitimate in your buying goods of the mills at what you believe is a good price and selling them?

A. That's right. 1424

Q. And you did that when the Schwab-Kepner Company was a partnership?

A. Yes.

Q. As a matter of fact, you regarded yourself as a pretty shrewd judge of market conditions, did you not? Answer frankly.

A. Yes, I did.

Q. Now, market conditions change in regard to gray goods just as they do with regard to stocks, etc.?

A. Yes.

Q. There are ups and downs in the market just 1425
as in other markets, is that not so?

A. Yes.

Q. And the market price of gray goods from day to day is pretty accurately ascertainable, is it not?

A. Yes.

Q. There are quotations, are there not?

A. Yes.

Q. Where do they appear?

A. I doubt if you can get a quotation on the entire line of numbers which we converted in the shape of a specific quotation, but covering a great

1426 many of the cloths there are regular weekly quotations issued by brokers.

Q. Now, if you were shrewd at any time in placing your order at the mills for a larger quantity of gray goods of a certain number than your competitors had placed you found that you could sell the goods to your competitors below the then market at which time they desired to buy them and still make a profit, did you not?

A. Sometimes, yes.

Q. And that was one of the causes for your selling goods in the gray instead of finishing them, is that right?

1427 A. Sometimes, yes.

Q. Now, in addition to that you have testified that it produced a quick profit because the time was shorter?

A. I think I testified that it produced a quick turn.

Q. By that you meant what is called colloquially a turn over in a business like yours?

A. Yes.

Q. Now, is it not the fact, Mr. Kepner, that the value of the money borrowed from the banker such as Mr. Dockendorff in your business is enhanced or decreased according to the ability to make a

1428 quick turnover?

A. Well, I guess you might put that question, Mr. Cohen, a little more. I don't think I can answer it properly the way you put it, it seems too general.

Q. Let me put another question to you which will, perhaps, save time. When you are borrowing money from a banker and paying a 6 per cent. interest and being charged commission besides on the profit which you make with the use of that money, depends upon, among other things, your ability to turn over that money several times a year in your business?

A. I think you said interest and commission? 1429

Q. Yes.

A. Well, of course, that is not entirely so. The quicker you turn your goods on a commission basis the more your money costs you, but if you figure it on an interest basis the less your money costs you.

Q. You felt that it was to your interest to turn your money over in your business as often as you could in the year?

Mr. Wolf: I object.

Q. Did you or did you not?

A. It was advantageous to turn the money as fast as possible, undoubtedly, yes.

Q. And by turning the goods rapidly in the gray 1430 where the market conditions justified it you were making an increased profit on the turn over in your business, were you not?

A. Not necessarily.

Q. In what respect were you not?

A. We sold the goods at a loss sometimes.

Q. I said if the market conditions justified it?

A. Of course, undoubtedly.

Q. And that might happen even if you sold the goods below the market price at the time of the sale, assuming of course that you bought the goods at a favorable price?

A. Undoubtedly. 1431

Q. Now, while you were in partnership with Mr. Schwab before you formed the Schwab-Kepner Company did you borrow money with which to conduct your business?

A. Yes.

Q. Did you borrow money on collateral?

A. Yes.

Q. Did you borrow money on merchandise?

A. Yes.

Q. And did you borrow money on accounts receivable?

1432 A. Yes. It may seem strange that I hesitated about that but I couldn't really recall at the time whether we did use our accounts as collateral.

Q. Now, when the Schwab-Kepner corporation was formed did you immediately enter into arrangements with Mr. Dockendorff as your banker?

A. No, I don't think that would properly state it.

Q. How long after you began business did you do that?

A. As a corporation?

Q. Yes.

A. I think it was shortly after we became a corporation.

1433 Q. Wasn't the corporation organized in January and this business started in September?

A. I can't recall the dates but the way you put the question would mean that we immediately entered into an agreement of that kind. The time may have been very close to the time of our incorporation. I don't recall.

Q. Now, before you entered into this arrangement with Mr. Dockendorff did you give him a statement showing the resources and liabilities of the Schwab-Kepner Company?

A. Yes, I think we did.

Q. Mr. Kepner, will you look at this carbon copy
1434 and tell me whether that is a copy of the statement which you gave to Mr. Dockendorff at or about the time you began to do business with him?

A. Of course I couldn't testify as to that except that I know that the capital was approximately that.

Q. The capital at that time was about how much?

A. I was under the impression that it was about $75,000. I see it is stated here at $70,000.

Q. Capital?

A. Capital and surplus here is $70,000. It was just my impression, I knew that it was approximately that.

Q. The capital and surplus together at about that time was between $70,000 and $75,000. 1435

A. That is my impression that it was about that, yes.

Mr. Cohen: Mr. Dockendorff, is the paper which I now hand you a true and accurate carbon copy of the original which you received from Mr. Kepner in or about September, 1908?

Mr. Dockendorf: Yes, as to the condition of the firm about February.

Offered in evidence.

There being no objection received in evidence and marked Exhibit P201, February 24th, 1911. 1436

Exhibit reads as follows:

"COPY.

THE SCHWAB-KEPNER COMPANY
Commission Merchants
350 Broadway

New York, February 3, 1908.

January 1, 1908

ASSETS

Cash in Bank	$10,801.85	
Accounts receivable	159,784.92	1437
Merchandise	142,649.75	
Fixtures	350.00	
		$313,586.52

LIABILITIES

Accounts payable	$113,880.93	
Bills payable (Banks)	119,000.00	
Bills payable (others)	10,000.00	
Capital and surplus	70,705.59	
		$313,586.52
Net sales for year 1907		$986,725.21

THE SCHWAB-KEPNER CO.,
J. B. Kepner, Pres."

1438 Q. You were saying something, Mr. Kepner, when we were considering this paper about your having organized the Schwab-Kepner Company with the net worth of the partnership of Schwab & Kepner?

A. That is the reason I was able to identify that paper.

Q. Now, in September of 1908 did you give Mr. Dockendorff a statement of the assets and liabilities of the Schwab-Kepner Company at or about that time, and is this the statement?

A. As a rule when I made a statement I signed it.

Q. Isn't this the letter that accompanied it at
1439 that time?

A. That seems to be all right, here is a letter of even date mentioning the enclosed statement.

Q. Have you any doubt that that is the statement?

A. No, I haven't any doubt at all.

Q. That is your signature to the letter?

A. That is my signature.

Offered in evidence.

There being no objection received in evidence and marked Exhibit P202 and Exhibit P203 respectively, February 24th, 1911.

Exhibit P202 reads as follows:

1440

"THE SCHWAB-KEPNER COMPANY

Commission Merchants
350 Broadway

New York, September 4, 1908.

September 1st, 1908

ASSETS

Cash on hand	$2,694.63	
Bills and Accts. Rec.	195,945.84	
Mdse.	179,754.85	
Fixtures	1,700.00	
		$380,095.32

LIABILITIES 1441

Bills payable	$169,440.23
Accounts Payable	130,850.33
Capital and Surplus	79,804.76
	$380,095.32"

Exhibit P203 reads as follows:

"THE SCHWAB-KEPNER COMPANY

Commission Merchants
350 Broadway

New York, September 4, 1908.

"Mr. J. E. Dockendorf, 1442
No. 20 Broad St., City.

Dear Sir:

As per conversation, we herewith enclose statement of our condition as of September 1st. This statement has been hastily compiled and we have not had opportunity, as yet, to verify it, but it is substantially correct. We request that you do not use this statement unless necessary as we issue but one statement per annum, in January of each year.

Very truly yours,
THE SCHWAB-KEPNER CO., 1443
J.B.K. H
J. B. Kepner,
Pres."

Q. Now, on the 9th of January, 1909, did you furnish Mr. Dockendorf with a statement of the Schwab-Kepner Company resources and liabilities and is this the statement and is that your signature at the foot?

A. Yes, that is my signature.

Q. And you furnished that statement to Mr. Dockendorf at or about that time?

1444 A. I undoubtedly did.

Offered in evidence.

There being no objection, received in evidence and marked Exhibit P204, February 24th, 1911.

Exhibit reads as follows:

"THE SCHWAB-KEPNER COMPANY
Commission Merchants
350 Broadway,

New York, Jan. 9, '09

STATEMENT

1445

Resources.

Cash on hand	8882.76
Bills & Accts. receivable	178956.44
Mdse.	203065.28
Fixtures	1727.50
Investments	32283.95
	424915.93

LIABILITIES

Bills payable	236402.90
Accts. "	107694.53
1446 Capital & Surplus	80808.50
	424915.93

The Schwab-Kepner Co.
J. B. Kepner Pres."

Q. Now, in December of 1909, did you furnish Mr. Dockendorff with a statement of resources and liabilities of the Schwab-Kepner Company as of the first of October, 1909, and is this the statement that you furnished to him bearing your signature?

A. Yes, that is my signature.

Q. And is this the statement which you furnished to Mr. Dockendorf? 1447

A. I have no doubt but what it is.

Offered in evidence.

There being no objection, received in evidence and marked Exhibit P205, February 24th, 1911.

Exhibit reads as follows:

THE SCHWAB-KEPNER COMPANY

Commission Merchants

66, 68 & 70 Leonard Street.

COPY 1448

NEW YORK, December 22nd, 1909

October 1, 1909,

Resources

Cash	25743.87
Bills receivable	24029.42
Accounts receivable	284710.22
Inventory	200284.34
Fixtures	2000.00
	536767.85

1449

Liabilities

Bills payable	171300.00
Accounts payable	215627.18
Capital	75000.00
Surplus	74840.67
	536767.85

THE SCHWAB-KEPNER CO.

J. B. Kepner, Pres."

1450 Q. And subsequently, in or about February, 1910 you furnished him with the statement that has been put in evidence and marked Exhibit R101, which I now show you?

A. That is my signature.

Q. And did you furnish that statement to Mr. Dockendorf at that time?

A. Yes.

Q. Now, Mr. Kepner, I call your attention to the fact that from these exhibits it appears that your capital and surplus as of the first of January, 1908 was $70,705, that your capital and surplus as of the first of September, 1908, amounted to $79,401,
1451 that your capital and surplus as of the first of January, 1909 amounted to $80,800, that your capital and surplus as of the first of October, 1909 was $149,840 and that your capital and surplus as of January 1st, 1910, was $156,326; do these figures enable you to testify whether or not during the years 1908 and 1909 the Schwab-Kepner Company increased its capital and surplus by profits?

A. Yes.

Q. Did it increase?

A. Yes.

Q. And did it increase to the extent indicated by
1452 these figures?

A. Yes.

Q. Are these figures accurate so far as you know?

A. So far as I know they are accurate.

Mr. Rosenbe[illegible]. I object to this line of questioning as improper cross examination. If Mr. Cohen wants to make the witness his witness in this matter I have no objection.

Mr. Cohen: Your Honor will see before I finish that this is proper cross examination.

Master: On counsel's assurance I will receive the evidence and overrule the objection for the time being. If counsel does not connect it so that it appears proper cross examination if the respondents wish to cross examine the question can be raised then. 1453

Q. In all of these statements which you gave to Mr. Dockendorf, Mr. Kepner, did you endeavor to state accurately all of the resources and all of the liabilities of the Schwab-Kepner Company?

A. Yes.

Q. And so far as you know did you state them accurately?

A. Yes. 1454

Q. And is that also true of the liabilities?

A. You said assets and liabilities. That is so.

Q. And by resources of course you meant assets?

A. Yes.

Q. And by liabilities you meant all that you owed?

A. Yes.

Q. Did you ever at any time in preparing these statements make any division of your resources and liabilities so as to indicate which if any of the liabilities were secured and which, if any were unsecured?

A. No. 1455

Q. Did you endeavor in making up these statements in stating your resources endeavor to classify your resources according to assets held as security for liabilities and according to assets free from lien?

A. No.

Q. Was it your practice at any time in making up statements from the books of the Schwab-Kepner Company showing its resources and liabilities

1456 to make any such distinctions in your resources and liabilities?

A. No.

Q. Were you ever asked to do so by any of your creditors?

A. No.

Q. Did you intend at any time, at the time you were giving any of these statements to Mr. Dockendorf or to any other creditor to conceal the fact that you were borrowing money on collateral?

Mr. Rosenberg: I object upon the ground that it is immaterial. We have no objection
1457 if counsel will frame the question, "Did you intend at any time that any of your creditors should ascertain that your accounts were transferred."

Objection overruled.

Question read.

Mr. Rosenberg: I object upon the further ground that it is two questions.

Question as to Mr. Dockendorf withdrawn.

Question read as follows: Did you intend at the time you were giving these statements to your creditors to conceal the fact
1458 that you were borrowing money on collateral? Answer yes or no.

Mr. Rosenberg: I object, the witness cannot be compelled to answer yes or no.

Master: Answer yes or no, if you can.

A. I must confess that I don't like the question. I can't answer the question. The question is, did I intend to conceal the fact that we had assets pledged or in other words any secured creditors. I think it is impossible to answer yes or no.

Q. You stated that you had a conversation with Bradstreet with reference to some report that had

been made and that was recalled. Did you in that 1459
conversation endeavor to conceal that you were and had been borrowing money on accounts receivable as security?

Mr. Rosenberg: Objected to. If counsel wants the conversation he should call for it, he cannot call for the witness's statements as to what he endeavored to do.

Question withdrawn.

Q. Did you tell Mr. Dockendorf in the conversation in which you spoke to him concerning your conversation with Bradstreet that you had concealed from Bradstreet the fact that you were 1460
borrowing money on accounts receivable?

A. No.

Q. Did you as a matter of fact in that conversation conceal the fact that you were borrowing money on accounts receivable?

Mr. Wolf: Objected to because the witness hasn't testified about a conversation had with Bradstreet as yet, that is an assumption of counsel.

Objection sustained.

Q. Did you have a conversation with Bradstreet such as you reported to Mr. Dockendorf? 1461

A. Yes.

Q. And did you in that conversation conceal the fact that you were borrowing money on accounts receivable?

Mr. Rosenberg: I object; the conversation should be called for.

Objection overruled.

Mr. Rosenberg: I want to know whether counsel means to ask whether he mentioned to Bradstreet or other commercial agencies

1462 the fact of these assignments. The witness might say no in answer to the question, "did you conceal" and yet he may not have mentioned the fact.

Question withdrawn.

Q. Were you ever asked by any of your general creditors to sign any printed form of statement concerning the financial condition of the Schwab-Kepner Company?

A. No, I think not.

Q. Were you ever asked by any of the credit men with whom you did business the direct question whether or not you borrowed money on your ac-
1463 counts receivable as security?

A. No, I think not.

Mr. Rosenberg: I move that the answer be stricken out as not responsive.

Motion withdrawn.

Q. You mean that you have no recollection of ever being so asked?

A. I have no recollection.

Q. Were you ever asked by Mr. Mitchnor of the Bank of North America whether or not you did in fact borrow money on your accounts receivable?

1464 A. No.

Q. Were you ever asked by Bradstreet at any time whether or not you borrowed money on accounts receivable?

A. No.

Q. Were you ever asked whether you borrowed money by any of the people to whom I have referred in my previous questions on any other collateral than accounts receivable?

A. No, I don't recall ever being asked.

Q. Have you any recollection of any inquiry ever being made by any of your general creditors or by

any of the banks with whom you were doing business as to whether or not you were borowing money from any source on accounts receivable as collateral? 1465

A. I don't recall any inquiry on the subject at all.

Q. Did you ever in any conversation with any credit man or with any representative of Bradstreet seek to evade any inquiry of that sort?

Mr. Rosenberg: I object, calls for a conclusion of the witness.

Objection sustained.

Q. Did you take any steps to prevent any inquiries of that sort being made by any of the credit men? 1466

Mr. Rosenberg: I object on the same ground.

Overruled.

Question read.

A. No, I never took any steps. It is sometimes very difficult to answer and my hesitation is to try and be as frank as possible.

Q. I want you to be, sir, and I expect you to take all the time necessary to consider the effect of the question before you answer it. Did you at any time do anything that you know of to block the natural avenues of inquiry concerning your methods of borrowing money? 1467

Mr. Wolf: Objected to on the ground that he has already said that he didn't do anything to prevent any credit man ascertaining

Objection sustained.

Q. What acts, if any, that you know of did you do to prevent any credit man from inquiring con-

1468 cerning your methods of borrowing money on accounts receivable?

Mr. Wolf: We object to that, asking this witness whether he did anything to prevent anyone ascertaining the facts.

Overruled.

Question read.

A. I don't recall any acts of that kind.

Q. Did Mr. Dockendorf at any time tell you to do anything to prevent credit men from making any such inquiries?

A. No.

1469 Q. Did he ever make any suggestion of any kind of that character or description?

Mr. Rosenberg: I object unless it be considered that counsel makes the witness his own witness.

Mr. Wolf: We object to the question on the ground that as the subject under examination the witness becomes the witness of counsel for Mr. Dockendorf and on that subject he is not to lead the witness.

Objection overruled.

Question read.

1470 A. No, I don't recall it.

Q. Do you know how these statements were prepared, Mr. Kepner?

Mr. Wolf: Which statements?

Q. These that are in evidence showing resources and liabilities.

A. They were prepared in detail by the bookkeeper and I issued them in a condensed form.

Q. Did you instruct the bookkeeper in preparing Exhibit R101 to furnish you with a true summary of the resources and liabilities on the first of January, 1910, of the Schwab-Kepner Company?

Mr. Wolf: I object on the ground that he has not testified that he gave instructions, he said he condensed it. 1471

Overruled.

A. I don't know that I ever specifically instructed the bookkeeper to issue a correct statement, we always supposed that such was the fact, just took it from the books.

Q. Did you give him any instructions other than to prepare an accurate summary of the resources and liabilities from the books?

Mr. Wolf: Objected to, he has just testified that he gave no instructions. 1472

Objection sustained.

Q. Did you give the bookkeeper any special instructions as to how to prepare these statements?

A. No.

Q. What did you expect the bookkeeper to do?

Mr. Rosenberg: I object to that.

Objection sustained.

Q. What did you request the bookkeeper to do?

A. If the statement was gotten up at my request I simply asked for a statement.

Q. And what did you mean by that? 1473

Mr. Rosenberg: I object.

Overruled.

A. I mean an itemized statement of our assets and liabilities.

Q. And what did the bookkeeper report to you when he furnished you with such a statement?

Mr. Rosenberg: Objected to, how can this witness know.

Overruled.

1474 A. I will have to get you to explain the question, Mr. Cohen.

Question read.

A. I don't see how I can answer any more fully than I have except to say it was supposedly a statement of our assets and liabilities.

Q. From what?

A. From our books.

Q. As shown by your books?

A. As shown by our books.

Recess Taken.

1475

After Recess.

JOHN B. KEPNER, examination resumed.

By Mr. Cohen:

Q. Now, Mr. Kepner, it is stated on Exhibit P201 that the sales for the year 1907 amounted to 8986,225.21, do you recall whether or not the total amount of your sales during the year 1908 were greater or less than your sales during the year 1907?

A. My impression is that they were more.

1476 Q. Do you recall whether or not the total amount of your sales during the year 1909 were greater or less than during the year 1908?

A. Greater.

Q. Can you give us approximately the total amount of your sales during 1908?

Mr. Wolf: I object on the same ground that was successfully urged by Mr. Cohen that the books of the company are the best evidence and that this calls for a conclusion.

Overruled.

A. I can't answer it approximately even as to

the figures. I know that our business increased 1477
from year to year but I really couldn't give you
any idea of the amount at that time.

Q. It increased in 1908 over 1907 and it increased in 1909 over 1908?

A. Yes, that is my recollection, that we increased every year that we were in business.

Q. And that was an increase in the total amount of sales for the year?

A. Yes.

Q. And as shown by these statements your capital and surplus increased each year also?

A. Yes.

Q. So that during the years 1908 and 1909 you 1478
were doing an increasingly larger and more profitable business, is that the fact?

A. I don't know that I can answer as to the more profitable business. I think that our aggregate profits were larger.

Q. If your capital and surplus increased you must have made profits?

A. Undoubtedly. I meant that our percentage of profit—

Q. I didn't ask you anything about your percentage of profit. The question relates to the sales.

A. Well, the amount of profit on sales would indicate the percentage of profit. You said increas- 1479
ingly profitable—my education leads me to believe that means percentage of profit.

Q. An increasingly profitable business according to my understanding is one where the profits increase from year to year—now, with that understanding did you, did you not do an increasingly profitable business in 1908 and 1909?

A. Do I understand the question to be did we make more money in 1909 than in 1908?

Q. And more in 1908 than in 1907.

A. I don't think I can answer that without some refreshing figures.

1480 Q. Haven't you already testified, sir, comparing these statements that your capital and surplus in 1908 was greater than it was in 1907 and in 1909 it was greater than in 1908?

A. Yes, but that isn't the question you asked.

Q. Did you make any money in your business in any other way than by converting cotton goods and selling goods in the gray?

A. No.

Q. So that whatever profits your books disclose were profits made in the ordinary course of your business?

A. Yes.

1481 Q. If your statements show from year to year an increase in your capital and surplus, it did show a profit from year to year, did it not?

A. No, I don't think that it did, necessarily.

Q. Why not?

A. We probably don't understand each other. If we made $10,000 of our capital in 1907 and $8,000 in 1908 we didn't make more in 1908 than in 1907 but we showed an increased capital.

Q. But the figures show that on the first of January, 1908, your capital and surplus was $70,000?

A. That was 1907.

Q. And by September it was between seventy-
1482 nine and eighty, that by October first 1909 it had jumped to $150,000 in the rough and that by the first of January, 1910, it was up to $156,000. Now, weren't you doing under those circumstances a more profitable business from year to year in the large?

A. No, I don't think the figures show that. I think it shows that it varied.

Q. But you were doing a profitable business right straight along?

A. Yes, in the aggregate.

Q. Did the disclosure of these facts, to your knowledge, improve your credit?

A. I think that it did.

Q. And in what locality did it improve your credit? Did it improve your credit with the people from whom you bought goods at the mills? 1483

A. Undoubtedly.

Q. Did it improve your credit with the banks where you borrowed money on the goods at the bleacheries?

Mr. Wolf: I object on the ground that it calls for a conclusion.

Q. If you know.

Mr. Wolf: I object to it. He cannot testify to that, he could not know what was in the mind of the parties. 1484

Q. Did you not testify in answer to Mr. Wolf's question that for a while after the report by this agent of Bradstreet was issued your credit was impaired, but that after that when the report was recalled your credit was improved again?

A. I don't recall that I testified to that.

Q. Is that the fact?

A. I don't think I can answer as to that.

Q. Don't you know whether or not your credit was as good after that report as it was before?

A. The only possible way that I can judge as to our credit would be by the amount of our indebtedness and I don't know that is a true criterion because we hadn't the use for the additional credit before. 1485

Q. Did there ever come a time when any of the establishments with whom you were doing business reduced what is commonly known as your line of credit?

A. Yes, there was.

Q. When did that take place?

A. Well, I can recall that one large line of credit was reduced, I should say within a period of six or

1486 eight or maybe nine or ten months prior to the receivership. It was an unusually large line of credit which we enjoyed with the mill and I think the reason for the reduction was that the Treasurer of the mill who was responsible for it had been criticised for the unusually large line and he reduced it.

Q. What mill was it?

A. The Parker Hargraves combination.

Q. That was eight or nine months before the failure?

A. I think about that.

Q. How large was your line of credit there before
1487 it was reduced?

Mr. Wolf: Unless it is shown that the witness has some knowledge of the subject I object.

Overruled.

A. Well, as it happens we had a conversation on this very matter.

Q. Please do not refer to any remarks objecting counsel makes in his argument, they are not made for the purpose of assisting you to answer the questions.

1488 Question read.

A. We had owed these mills approximately $100,000, and he considered this a large line and I think that he told me his directors considered that amount of credit too large and he decided to cut it down to $50,000 approximately.

Q. In your conversation with him were you asked any questions at that time with regard to your borrowing money on security?

A. No, I don't think I was.

Q. Did you give any information with regard to your borrowing money on accounts receivable or on merchandise?

A. At that interview?

Q. Yes. 1489

A. No.

Q. Now, was your credit reduced at or about that time in any other house?

A. It is my opinion that our credit was reduced in one or two other places.

Mr. Wolf: I move to strike out the answer as it is merely an opinion of the witness not a fact.

Master: What do you mean by saying in your opinion?

A. I know that I formed that opinion at that 1490
time. In one particular place to which I refer we bought goods freely and I experienced in attempting to buy goods from that party what I thought was a tendency to cut down on the credit. In some places they wouldn't sell to us at the market but sold to others and that is the way I formed the opinion although the matter was never mentioned by the dealer to me as a curtailment of credit.

Q. Now, precisely what was it that you desired to have recalled by the Bradstreet Company?

A. At the bottom of their report there was a
remark, I don't know that I can give it exactly 1491
but I think it was about like this, "These figures are not taken seriously," and that is the part of the report to which I objected.

Q. What figures did that refer to?

A. Our statement.

Mr. Wolf: Which statement?

A. January 1st, 1910.

Q. Had you seen the Bradstreet report?

A. Yes, I had seen that report.

1492 Q. Had you seen the Bradstreet report made in February, 1910?

A. I don't know whether that is the date or not.

Q. Look at this paper and say whether or not it refreshes your recollection.

Mr. Wolf: I object unless we are allowed to see it.

Q. Did you ever see any report of Bradstreet concerning your concern in February, 1910?

A. I can't answer as to the time.

Q. Did you ever see any report of Bradstreet in which it was stated that you were borrowing
1493 money on merchandise and accounts receivable?

Mr. Wolf: Objected to, there isn't any evidence that any such statement was issued.

Overruled.

A. The question is whether I have seen a report in which the Bradstreet Company stated that we were borrowing on merchandise and accounts receivable?

Q. Yes.

A. I don't think I ever saw such a report from Bradstreet, I don't recall.

1494 Q. Were you ever informed that Bradstreet made such a report concerning you?

A. I would like to know what latitude I have in answering questions. Sometimes it is almost impossible to answer the question intelligently by just the statement of yes or no, and I don't want to appear

Master: Can't you answer that question yes or no?

A. Well, I don't ever recall the fact of a statement to me that Bradstreet had issued a report to that effect.

Q. Do you recall being informed that any other agency had issued such a report? 1495

A. I was informed in a general way that the agencies had reported that. I never recall being informed of a specific agency.

Q. That the agencies generally had reported that fact, is that your answer?

A. No, I didn't say generally. I said as far as I recall the information that I received was that the agencies reported such a thing.

Q. And by such a thing you mean that you were borrowing money on merchandise and accounts receivable?

A. Yes.

Q. When did you receive that information? 1496

A. Why, I certainly can't answer that with any accuracy.

Q. What is your best recollection?

A. Well, I know that I received such reports several months prior to the receivership.

Q. Was it referred to by any credit man where you were buying goods on credit?

A. No, it was never.

Q. Was it referred to by any bank where you were borrowing money from the banks?

A. No. Well, I can recall that our borrowing money on merchandise was mentioned in an attempt to borrow money from a bank which was not successful. 1497

Q. Oh, of course, the fact that you were borrowing money on merchandise was known to the banks from whom you borrowed that money?

A. Yes, but I attempted to borrow from other banks.

Q. And when you attempted to borrow from other banks you disclosed the fact that you had been borrowing money on merchandise?

A. Well, I don't know that I was guilty of disclosing that.

1498 Q. They asked you and you answered?

A. I don't know that that was the fact. As a rule that was arranged by the references, they always wanted a reference and one of our references was the Bank of North America so that that fact was commonly known at the banks from whom we attempted to borrow money.

Q. Were you ever asked by any of the credit men who passed upon the credits given to your concern to furnish them with any definite statement of the amount of your liabilities that were secured?

A. I think that the question was asked me at
1499 various times in our entire business history as to the amount of money we borrowed on merchandise. I don't recall the question ever being asked as to the amount of money borrowed on accounts.

Q. And were those questions asked with these statements before the party who was asking?

Mr. Wolf: Which statements?

Mr. Cohen: Those in evidence.

A. Well, no. I don' think it was ever gone into in just that way. There was never any very close examination as to that. It was mentioned in my
1500 purchasing goods and endeavoring to establish a large line of credit, the fact that we borrowed money on merchandise was mentioned and they have asked me how much. I recall that, but it was never a very close examination in conjunction with the statement.

Q. Did there ever come a time during the Schwab-Kepner Company's existence before the receivership when there was any close investigation made by any of the creditors or credit men from whom you sought credit into the amount of your liabilities that represented liabilities secured by either merchandise or accounts?

A. I don't think I can answer that—

Q. So far as you know. 1501

A. I never had any knowledge of anything of the kind.

Q. Your attention was not called to any such thing?

A. No. Except that I know that we were subject to a great deal of discussion and we were talked about and it was said—a great deal was brought to me by friends—that we were constantly being discussed and talked about and failure predicted and things of that kind.

Q. But you were not called upon so far as you know, and no other officer of the Schwab-Kepner 1502
Company was called upon so far as you know to answer specifically by any credit man any question concerning the amount of your liabilities secured by part of your resources?

A. No.

Q. In spite of all these rumors that were communicated to you?

A. Yes.

Q. Now, did you discuss with Mr. Dockendorf from time to time during 1908 after beginning business with him, the increase in the volume of your business?

A. Yes, I think that likely occurred from time 1503
to time.

Q. And after that time?

A. Yes.

Q. Now, is it not the fact that when you began doing business with Mr. Dockendorf one of the results that you expected to accomplish and one of the things you discussed with Mr. Dockendorf was the increase by the Schwab-Kepner Company of its volume of business from the use of the money which Mr. Dockendorf would lend to that concern?

A. Yes.

1504 Q. Now, you stated in one place in your examination that you got all your money from Mr. Dockendorf, that was not strictly accurate, was it?

A. Well, it is probably exactly accurate from the way the question was asked. The fact is that we reached our limit on the amount of money we could borrow on merchandise.

Q. When?

A. Sometime prior to the receivership.

Q. How long prior?

A. Oh, quite some considerable time.

Q. What do you mean by a considerable time?

1505 A. Well, I don't know that I could answer that except by the figure. I recall approximately the amount of credit of that kind which we had and I think the figures will show that we reached it quite some time prior.

Q. What was the amount of credit which you had?

A. With the Bank of North America we had a credit I think of about $100,000.

Q. Was that a credit on security?

A. All together.

Q. Did you have any credit there outside of credit on security?

1506 A. Yes. We had, I think, without security about $20,000 or $25,000.

Q. Did you have similar credits with other banks?

A. We had none without security.

Q. What credit did you have on security with other banks?

A. We had a credit with the Standard Bleachery which acted in the capacity of a bank of $40,000.

Q. What other concern?

A. And we had a credit with the Westminster Bank of Providence of, I think, about $40,000. It

wasn't very much and at one time we had a small credit with the Chatham Bank here in New York which was afterwards recalled. 1507

Q. Did there come a time during 1909 when this credit on security was reduced in any of these banks?

A. No, except in that one instance of the Chatham, removed I think in 1910.

Q. Wasn't there the Slater Trust Company?

A. Yes.

Q. How much did that amount to?

A. I knew there was another but I couldn't recall it. I don't know that I can recall the amount of that.

Q. What is your best recollection? 1508

A. Oh, I think it was probably about $30,000, it wasn't far from that anyway.

Q. Then in the rough what was the amount of secured credit which you had with the banks?

A. I imagine it must have been in the neighborhood of $200,000.

Q. And what was the amount of unsecured credit which you had at the banks?

A. I think it never exceeded twenty or twenty-five thousand.

Q. Have you any knowledge as to how much your credit amounted to with Mr. Dockendorf dur- 1509
ing the year 1909?

A. I know it was very large. I don't know that I can answer it very accurately.

Q. Well, it was at least $250,000, wasn't it?

A. I was going to say at least $200,000.

Q. Did you have any credit for borrowed money either with or without security at any other places than the banks and Mr. Dockendorf?

A. No, I don't think the firm ever borrowed any money from other sources.

Q. Assuming that your capital and surplus

1510 amounted to between $150,000 and $160,000, you were borrowing then approximately three times as much as your actual capital and surplus, were you not?

A. Yes.

Q. And most of it was upon security?

A. Yes.

Q. What did you mean by saying at page twenty when asked the question, "State what was said between you and Mr. Dockendorf on that subject," you answered that the amount of business you should do was brought up in your interviews and then you said, "We derived all our money from

1511 Mr. Dockendorf."

A. That was the actual condition at that time.

Q. Haven't you just testified that you were borrowing money from the banks on security?

A. That had already reached its limit.

Q. You mean that if you were to increase your borrowing capacity you had to get it from Dockendorf?

A. That is so, and my answer was also correct; at that time we were not getting any money, it was not possible for us to get any money from any source except Mr. Dockendorf.

Q. Didn't you have to give notes to the banks?

1512 A. Yes.

Q. And didn't the banks discount those notes and credit it to you?

A. Yes.

Q. And don't you call getting a note discounted and getting the note credited to you getting money from the bank?

A. It might have been a physical transaction. The only instance where we used time notes on this secured loans in the banks was the Bank of North America and the Standard Bleachery. In other cases they were demand loans and there was

no renewal. In the cases of the Bank of North 1513
America and the Standard we renewed it with another note.

Q. Did there ever come a time when the banks refused to renew your notes?

A. No.

Q. Did there ever come a time prior to just before the receivership when the demand loans were called?

A. No.

Q. So that your notes were renewed from time to time without any payment of the notes and rediscount of them?

A. That is correct. I think my recollection now 1514
is that we had immediately proceeding the receivership probably reduced our loan with the Bank of North America. I am not entirely clear but I think probably we had reduced our loan.

Q. You couldn't reduce the loan except by paying the bank?

A. I mean we had reduced our unsecured loan, that is the twenty or twenty-five thousand at its maximum. It was less than that I know at the time of the receivership, that I know had been reduced.

Q. If it be true that you derived all your money from Mr. Dockendorf then you could not have 1515
reduced that unsecured loan except by using some of the money you got from Mr. Dockendorf?

A. That is right.

Q. So you reduced the amount of your unsecured loans at the bank with money that you got from Dockendorf?

A. That is right, yes, sir.

Q. Now, from time to time some of the obligations representing this $250,000 or $200,000 of borrowed money outside of money borrowed from Dockendorf matured, did they not?

1516 A. You mean the accounts?

Q. No, I am referring now to the borrowed money, not to accounts at all.

A. The notes matured, yes.

Q. And did you from time to time discuss with Mr. Dockendorf the amount of advances that you would require for the purpose of meeting those maturing obligations?

A. No, that didn't figure in that way at all.

Q. Did you ever write to Mr. Dockendorf any letters in which you told him that such and such a note would be maturing at the bank at such and such a time and that you would have to have cash
1517 to meet that note?

A. Yes, but that didn't refer to borrowed money.

Q. What did it refer to?

A. That referred to purchased accounts which had been converted to notes.

Q. Then you gave notes to some of the mills from whom you bought goods and these notes matured from time to time, is that the situation?

A. Yes.

Q. And as these notes matured you had to meet them at the banks, did you not?

A. Yes.

1518 Q. And you knew that if you didn't meet them at maturity your credit would be impaired?

A. Yes.

Q. Now, if, as you say, you had exhausted the limit of the amount which you could borrow on merchandise, did you have any other means of securing money with which to meet your maturing obligations except such money as you might get from Mr. Dockendorf?

A. Certainly not.

Q. Now, did that not necessitate as a matter of business from week to week that there should be

discussion between you and Mr. Dockendorf as to how much you should need during the following week? 1519

A. I don't know that I am competent to answer. I can give it as my opinion that I should think it would be absolutely necessary for Mr. Dockendorf to have an interview with me.

Q. Did you not have frequent interviews of that character?

A. Yes.

Q. And wasn't it necessary from your standpoint that they should be had?

Mr. Wolf: I object, immaterial.

Overruled. 1520

A. I consider that a very difficult question to ask me to say whether it was necessary or not.

The Master: From the standpoint of the Schwab Kepner Company.

A. I think I can best answer that question by yes.

Q. Did you from time to time have to ask Mr. Dockendorf for money to meet maturing obligations?

A. Yes.

Q. Did you when asking him for such money inform him what maturing obligations there were that you wanted to meet? 1521

A. Very frequently.

Q. Did he from time to time decline to make advances to you?

A. Yes, I think he did.

Q. Was there any discussion between you at times as to whether or not the security which Mr. Dockendorf held was adequate to make advances that you wanted?

A. Yes.

1522 Q. And that frequently occurred, did it not?

A. Yes.

Q. Did Mr. Dockendorf ever ask you to take your borrowing account to some other bank or banker?

A. I don't know that he ever asked me to. I remember hearing him say that he wished we would.

Q. Didn't you understand that it was an expression of a desire on his part to be relieved of lending you the money?

A. Yes.

Q. When was that?

A. That was comparatively recently.

Q. How long ago?

1523 The Master: How long before the receivership?

A. Well, I should say within a period of about four months. Of course, you know it is very difficult to fix a time on anything. It is for me.

Q. Did you make any effort to find some other banker to take Mr. Dockendorf's place?

A. No.

Q. Did you ever complain to Mr. Dockendorf that if he were to stop lending you money on accounts receivable it would mean that you would have to stop business?

1524 Mr. Wolf: I object to the use of the word complain, it might have an improper significance.

Overruled.

Question read.

A. Well, I think that was probably never mentioned. It was so obvious that it was never mentioned. I don't know — we would certainly have had to have an extension at least and it would amount to a radical change in our business of some kind. Somebody would have had to take the loan that Mr. Dockendorf carried.

Q. Do you mean by your answer that if at any 1525
period of time Mr. Dockendorf had stopped lending you money on your accounts receivable that your business would have had to stop?

A. That is not necessarily so. I would have had to do some other financing of some kind.

Q. In other words you had reached the point in your business where you were doing a business to such a large extent on money borrowed on security, both merchandise and accounts receivable that if any one of the banks or bankers with whom you were doing business stopped making the substantial loans that they were making you would have to stop your business and get some other bank 1526
or banker in their place?

A. You said if any bank stopped. That isn't exactly so. If Mr. Dockendorf had cut out his $250,000 worth of credit, that was large enough to precipitate a radical change in our business of some kind, but as I stated before, one bank did take away their credit but it didn't amount to much. The fact is if our ability to borrow money on our merchandise and accounts, if either or both had been removed we would have had to transfer that credit to the people from whom we bought goods or quit business.

Q. Now, wasn't the amount which you could bor- 1527
row from Mr. Dockendorf dependent upon the amount of business which you did?

A. Yes.

Q. In other words since you gave him accounts receivable as security for his loans the amount which you could borrow depended upon the amount of the accounts receivable?

A. Yes.

Q. Now, you several times in your examination by counsel for the Trustee used the expression "accounts we would have to make," "accounts to be

1528 created," did you use that expression in any other sense than accounts made or created in the ordinary and usual course of business?

A. No.

Q. You meant that in order to have collateral on which to borrow money from Mr. Dockendorff you had to sell goods?

A. Yes.

Q. And you had to sell goods to people who would agree to pay for them, isn't that so?

A. Yes.

Q. Do you know of any conceivable way in which you could sell goods without buying them to sell?

1529 In a legitimate business?

A. Well, of course, the business couldn't be consummated.

Q. And of course when you were discussing the amount of sale you would have to make within a particular time to have security, you would also recognize the fact that you would have to buy merchandise on credit to make those sales?

A. Yes.

Q. Was there anything unusual or extraordinary about that?

A. I fail to see anything.

Q. That was the usual and ordinary course of

1530 business between you and Mr. Dockendorff at the time you began doing business, was it not?

A. Well, no, I think the discussion of that kind came up more in our later relations. I don't recall that having been brought up earlier.

Q. Wasn't that because you wanted to get more money from Mr. Dockendorff than you got when you first began to do business with him?

A. I think that is partially true. I think it is also true that it was because our condition was more extended, more acute, our borrowings were getting heavier and required more attention.

Q. What do you mean by your borrowings were getting heavier? 1531

A. Our liabilities, our statements will show that they were much larger, they were increased out of proportion to our capital.

Q. And your borrowings from Mr. Dockendorf increased?

A. Yes.

Q. And they increased from May, 1910, down to the time shortly prior to the receivership, did they not?

A. May, 1910, I think they did, yes.

Q. Now, Mr. Kepner, did you ever deliberately go out and buy goods for the purpose of enabling Mr. Dockendorf to recoupe his loan? 1532

Mr. Wolf: I object to that as calling for a conclusion and not for the facts.

Overruled.

A. You very often ask me questions that I feel almost require a discussion of psychology before I can answer. You ask me a question now if I ever bought any goods with the intention of recouping Mr. Dockendorf. Every transaction of the business was more or less tied up with Mr. Dockendorf. If you mean did I ever go out and buy goods and transfer them to Mr. Dockendorf just for that purpose why I can answer that in the negative. 1533

Q. Did you do that directly or indirectly, I mean with the deliberate intention of doing it, for that sole purpose?

A. My intention always was to protect Mr. Dockendorf.

Q. I understand you were to protect him by seeing that he had security for his advances, but were you buying goods and selling goods after May, 1910, for the purpose of conducting the business of the Schwab-Kepner Company in the way in which it was usually conducted or were you doing it for

the purpose of liquidating Mr. Dockendorf's loan?

A. That question is very easily answered. Your question was rather long.

Question read.

Mr. Wolf: Objected to as calling for the legal conclusion of the witness and not for the transaction.

Overruled.

A. We were buying and selling goods in order to conduct the business in the usual way and not for the purpose of liquidating Mr. Dockendorf's loan.

Q. Now, Mr. Kepner during the year 1910, there were numerous changes in the market conditions relating to the gray and the finished goods, were there not?

A. Yes.

Q. And the market conditions at times were very discouraging?

A. Very.

Q. And during that period was Mr. Williams pessimistic at times?

A. Yes.

Q. And were you optimistic?

A. I have been accused of being optimistic.

Q. Is that the fact?

A. I don't know that I am competent to answer.

Q. Did you not feel when you were going to Mr. Dockendorf, in perfect frankness, did you not feel when you were going to Mr. Dockendorf—

A. That we would be able to pull it through? Yes.

Q. You felt that you would be able to pull it through and the market conditions would change so that you could conduct the business at a profit?

A. Yes.

Q. And that was your frame of mind all through and almost up to the failure?

A. Yes.

1537

Q. And that was the manner of your conversation with Mr. Dockendorf?

A. Yes.

Q. And when Mr. Williams communicated the fact to you that he was pessimistic you tried to reverse that feeling in Mr. Dockendorf's mind, did you not?

A. I don't know that Mr. Williams ever conveyed that directly to me. It was conveyed to Mr. Dockendorf by him and by him to me. I don't think that Mr. Williams ever appeared pessimistic to me. I know that Mr. Dockendorf told me that Mr. Williams appeared that way and that is the way I 1538
got the impression.

Q. And when he communicated that fact to you you tried to create a different feeling in his mind, did you not, honestly or at least prevent that feeling from getting into his mind?

A. That might have been the effect of my conversation. I recall that I expressed confidence to Mr. Dockendorf of our ability to pull through and that the market conditions would change so that we could do business at a profit.

Q. Did you endeavor to deceive Mr. Dockendorf or were you expressing your real mental attitude?

A. I was expressing my real mental attitude. 1539

Q. You knew perfectly well, did you not, that if at any time the communications that Mr. Williams made to Mr. Dockendorf resulted in Mr. Dockendorf stopping the advance of money to you on accounts receivable it was practically impossible for you to go on doing business?

A. Possibly from my optimistic nature I wouldn't think it was impossible for us to go on. I certainly didn't favor Mr. Dockendorf quitting.

Q. Did you have any other source which you could go to?

1540 A. No, I hadn't any other source.

Q. From which you could borrow the money?

A. The necessity had never arisen, I never attempted to. I think now it might have been impossible.

Q. And the crash would have come almost with the first maturing obligation that you would have been unable to meet, isn't that the fact?

A. No, not exactly, not with the first. We always had maturing obligations overdue for a long period.

Q. But you were able to get an extension of time?

1541 A. Yes, able to satisfy our creditors.

Q. And without disclosing to them that you were borrowing money on accounts receivable?

A. They never asked about it.

Q. Did you deliberately start out to conceal that fact from them?

A. There can be no question as to my desire that that be not generally known. Of course I realized that it would not be to our advantage to have that fact known and I never, while I never made any false statements as to that and I don't think I was particularly careful to conceal it, I did not tell it.

Q. You didn't advertise the fact?

1542 A. No, I didn't.

Q. And you didn't tell any untruths when you were asked about it?

A. No.

Q. But you left it to the other fellow to ask the questions?

A. Yes.

Q. And when you were asked the question you answered it truthfully?

Mr. Wolf: I object; the witness has already testified that he never was asked.

Question withdrawn.

Q. You have stated that you did not want it generally known that you were borrowing money on accounts receivable, was it your mental attitude that if any questions were asked concerning what you were actually doing you would evade the questions or answer untruthfully concerning it? 1543

Mr. Wolf: Objected to for the reasons stated already.

Objection sustained.

Q. Did you ever in fact evade any question which was put to you, any inquiry which was ever put to you concerning your borrowing money on accounts receivable? 1544

Mr. Wolf: Objected to for the same reason.

Overruled.

A. I have testified that we were never asked as to the borrowing of money on accounts.

Q. You understand that it is sometimes possible to steer a conversation around so that the question is avoided, did you ever do that?

Mr. Wolf: I object, calling for a conclusion of the witness.

Objection sustained.

Q. On page 37 of your examination you were asked this question and gave this answer: 1545

"Q. What was said between you and Mr. Dockendorf on the question of the credit of the Schwab-Kepner Company?

A. Mr. Dockendorf asked me if our credit had been impaired and I said no, I didn't think that it had. I think our credit is just as good as it ever was."

And you testified that that conversation was

1546 within a period of four to six months prior to the receivership. Was that conversation with Mr. Dockendorf at the time when you were endeavoring to secure more money from him?

A. Well, I don't know whether that—I don't think that I can answer that question to your satisfaction.

Q. Well, was it said when you were trying to borrow money from Mr. Dockendorf?

A. My attitude was continually that of borrowing money from Mr. Dockendorf.

Q. Did you have any interviews with Mr. Dockendorf except when you came down to get money
1547 from him?

A. I never went down to see Mr. Dockendorf, with some exceptions, except by his invitation and while the borrowing of money from Mr. Dockendorf always had something to do with the conversation I can't say that that was the real object of the interview.

Q. What was the object of your interviews with Mr. Dockendorf if it wasn't to borrow money from him?

Mr. Wolf: I object; the question covers interviews over a period of four to six
1548 months.

Overruled.

Question read.

A. I think the immediate object of our interviews was varied. Mr. Dockendorf would call me down on one thing or another.

Q. State any one of the things he called you down there on. Weren't they all in connection with the borrowing of money from him?

Question withdrawn.

Q. Weren't all of the things he called you down

there for things relating to the borrowing of 1549
money from Mr. Dockendorf for the Schwab-Kepner Company?

A. They were undoubtedly connected with that, of course.

Q. Now, was it in connection with one of those interviews that you told Mr. Dockendorf what you testified to at page 37 that your credit was just as good as it ever was?

A. I don't think I would be answering that question frankly unless I state that as I recall it that remark of mine as to our credit being as good as it ever was was in answer to a doubt either expressed—I won't say a doubt, I will say a ques- 1550
tion, the natural investigation by Mr. Dockendorf of me as to whether he would be justified in lending me this money, whether I could fulfill all that was necessary on the part of the Schwab-Kepner Company, whether it was possible for me to fulfill all the obligations necessary to continue the business and produce the collateral necessary to secure Mr. Dockendorf. It wasn't in trying to support a plea of mine for more money, merely, I think it was probably in conjunction with the explanation that I have made.

Master: Were you at that time trying to 1551
increase your loan with Mr. Dockendorf?

A. Not necessarily trying to increase our loan.

Q. Trying to continue it?

A. Trying to continue our business with Mr. Dockendorf.

Q. Did you endeavor to state the situation impartially, as you knew it.

A. At that time, yes.

Q. Was it the fact that your credit was just as good as it ever was?

A. I think the figures would bear that out.

1552 Q. I am asking you.

A. That is where I would get my knowledge, from the figures.

Q. And you based it upon that knowledge?

A. Yes.

Q. And you were endeavoring to assure Mr. Dockendorf that your credit was unimpaired at that time?

A. I endeavored to make it plain to Mr. Dockendorf that our credit—we were capable of buying as much goods and more than we ever were before.

Q. Did you mean by that that you had any doubts as to your ability to meet your unsecured obligations as they matured?

1553

A. No, I hadn't.

Q. You felt just as confident of your ability to do that as you felt of your ability to go on buying goods cheaply?

A. Undoubtedly.

Q. And you felt that because the market conditions would improve that your ability to buy goods cheaply would not only enable you to meet all your maturing obligations both secured and unsecured, but would enable you to sell goods which would show a profit at the end of the year?

1554 Mr. Wolf: Objected to unless counsel will explain what he means by showing a profit.

Objection overruled.

Question read.

A. No, I don't think that I expected to make any money. I didn't expect to show as large a capital and surplus at the end of the year as we had at the beginning. I knew that our losses had been considerable and I doubted our ability to make up in the few remaining months of the year the money that we had lost. I imagined that we

would probably show a smaller net worth at the 1555
end of the year than at the beginning. I think that was my attitude at that time, I expected to make a profit in the latter part of the year, I thought conditions would change before the close of the year, but I doubted whether we would be able to make enough money to offset our losses and make an additional profit.

Q. But you certainly expected to meet all your obligations, both secured and unsecured.

A. Undoubtedly, yes.

Q. And that was your frame of mind when you sought to get money from Mr. Dockendorf during the last four to six months preceding the receiver- 1556
ship?

A. Yes.

Q. And you communicated that frame of mind to Mr. Dockendorf?

A. I think that I did.

Q. And so far as you know Mr. Dockendorf was affected in your favor by that communication?

Mr. Wolf: I object, calls for a conclusion, this witness can not testify as to Mr. Dockendorf's mental operation.

Question withdrawn.

Q. Did Mr. Dockendorf express himself to you as 1557
being satisfied with your statement?

A. I don't know that he did but I think his attitude showed that he was.

Mr. Wolf: I move to strike that out.

Motion denied.

Mr. Wolf: I move to strike the answer out as not responsive.

Motion denied.

Mr. Wolf: I move to strike out that portion of the answer which refers to "his attitude" as not responsive, as being a conclu-

1558 sion of the witness and particularly because it is not responsive to any question, the question called for what Mr. Dockendorf said.

Motion denied.

Q. Did Mr. Dockendorf at any of the conversations in which you expressed this confidence in your ability to meet your obligations express any opinion to you as to the effect on his mind of what Mr. Williams had said to him?

A. The question was did Mr. Dockendorf ever express to me the effect of Mr. Williams' conversation?

1559 Q. Yes.

A. Yes, I think Mr. Dockendorf rather thought that Mr. Williams took a pessimistic view of things.

The Master: Is that what Mr. Dockendorf said to you?

A. Yes. I don't know that I can answer that any more fully than undoubtedly Mr. Dockendorf frequently mentioned to me that from the start Mr. Williams had taken a pessimistic view of things and he was inclined to discredit his opinion.

Q. Discredit whose opinion?

A. Mr. Williams'.

1560 Q. Did you have occasion to learn when you were doing business with Mr. Dockendorf from him whether or not he had confidence in your own moral integrity and your ability to keep your promises?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant, calls for a conclusion of the witness and for the mental operation of Mr. Dockendorf as to which I should suppose Mr. Dockendorf's testimony would be the best evidence.

Overruled.

Question read.

A. To answer that question perfectly frankly I 1561
think I have got to report that Mr. Dockendorf's attitude toward me was not always the same.

Q. After Mr. Williams came there I am asking you about.

A. I think that is a very difficult question for me to answer. I suppose I have got to answer any questions put to me but I think that is almost impossible.

By the Master:

Q. Did Mr. Dockendorf say anything to you in that regard after Mr. Williams came there?

A. I don't think I could give any conversation 1562
that would satisfy anybody here as to Mr. Dockendorf's attitude toward me.

Q. Did he say anything about his confidence in you?

A. I can remember his making a statement that prior to the time that he had discovered irregularities in our business wherein we hadn't informed him of certain credits that should have been passed, that he had every confidence in me and I think that after that came up—I don't think that was meant to convey the fact that he had lost confidence in me entirely, in me personally, because he—I think that Mr. Dockendorf stated to me numerous 1563
times that he would take my word for it or something to that effect which would seem to indicate a certain amount of confidence in my integrity.

Q. Was this after Mr. Williams came there?

A. Yes. Of course as to the attitude of Mr. Dockendorf toward me I am absolutely incompetent.

Q. The question was what he said to you after Mr. Williams came there.

By Mr. Cohen:

Q. So far as you know, Mr. Kepner, after Mr.

1564 Williams came there so far as you know or so far as Mr. Dockendorf conveyed anything to you. Mr. Dockendorf did take your word for what you said concerning the general financial condition of the Schwab-Kepner Company?

Mr. Wolf: I object, calls for a conclusion. Question withdrawn.

Q. Did Mr. Dockendorf ever say anything to you to the effect that he doubted your word as to any statement which you made concerning the financial condition of the Schwab-Kepner Company after Mr. Williams came there?

1565 A. No, I don't think Mr. Dockendorf ever expressed any doubt as to truthfulness of any statement which I made as to our financial condition.

By the Master:

Q. Or as to your methods of doing business, the truthfulness of your statements as to your methods regarding your methods of doing business?

A. No, I don't think he ever questioned that. I don't know that I get the entire meaning of that.

Q. You said there was talk about some irregularities in your method of doing business, what did Mr. Dockendorf say about that?

1566 A. Mr. Dockendorf would appear to me somewhat erratic. He said prior to my discovery of these irregularities I had every confidence in you, everything you said I took as absolutely so and he was under the impression, I think, that I had deceived him in some way on some matters that occurred on these credits and things and he did tell me—our interviews were stormy sometimes, Mr. Dockendorf's part at least—and he has told me that he couldn't believe what I said, but I think I give the true testimony in the case. I think he really did believe in what I told him as to the facts.

By Mr. Cohen:

1567

Q. Now, concerning these irregularities, did you in fact deceive him as to any of those facts?

A. I did not.

Q. What were the irregularities?

A. The irregularities were that some time prior to May, immediately prior to May there were a great many credits which should have been passed to customers because the goods had been returned or some other reason.

Q. What do you mean by credits passed?

A. The accounts should have been cancelled by credits issued by us to our customers.

Q. All right go ahead.

1568

A. Mr. Dockendorf, by an investigation which he instituted in which we assisted him found that this was a considerable amount, I think it amounted to over $60,000 and he thought that I was responsible for covering that up or in deceiving him in some way.

Q. Were you responsible for it?

A. I was not.

Q. How did it happen?

A. In so far as I was President I was responsible more or less for everything that occurred but the thing happened really, I think, from the overwork of the man who had charge of it.

1569

Q. Who was he?

A. Conran.

Q. So that it is your understanding that it was neglect of the bookkeeping department in your establishment?

Q. Yes. I may have been cognizant of the fact that there were certain credits which should have been in Mr. Dockendorf's hands and which were not, I think I probably was although I don't recall that, but I didn't suppose the amount was so considerable as it turned out to be. I was probably

1570 to blame, as I testified before, in the credits not being sent on time because I made it a rule not to issue a credit to any customer until we were absolutely certain that the customer was entitled to it, until we had gotten the goods in our own possession if they were returned and of course we would not advise Mr. Deckendorf of the credit until we had actually passed it to the customer, but that does not cover them all because there were some passed to customers which didn't go to Mr. Deckendorf.

Q. You say that situation arose through the over work of Mr. Curran?

1571 A. I think that was largely to blame for it, he couldn't get through with his work.

Q. Now, in May, 1910, did you and Mr. Deckendorf discuss that situation?

A. I think we did.

Q. And wasn't it the purpose of sending Mr. Williams up there to correct that condition and see that the bookkeeping methods were improved?

A. Mr. Hardy and Mr. Williams.

Q. And that was the reason that they both came up to the Schwab-Kepner Company, to straighten out your bookkeeping methods and see that the irregularities were corrected and avoided in the

1572 future?

Mr. Wolf: Objected to, incompetent, irrelevant and immaterial, the purpose of the employment of Mr. Williams is already in the record in the shape of written instructions to Mr. Williams from Mr. Deckendorf.

Objection sustained.

Q. Did you at the time that these irregularities were discovered seek to get a good bookkeeper?

A. Yes.

Q. Did you discuss the matter with Mr. Deckendorf?

A. Yes, I did.

1573

Q. Was it as the result of that discussion that Mr. Hardy came up to your place?

Mr. Wolf: Objected to.

Overruled.

A. No, Mr. Hardy was not retained in the capacity of a bookkeeper, we got a new bookkeeper.

Q. Who was he?

A. Mr. Barlow. We also divided up the work and got more people in the department.

Q. In short, you and Mr. Deckenduff both sought to adopt methods that would prevent these irregularities occurring in the future.

1574

A. Yes.

Q. And did you not tell Mr. Deckenduff yourself, personally, that so far as you were concerned these irregularities would be prevented in the future?

A. I think that I did.

Q. And weren't your conversations with Mr. Deckenduff in which he criticised these methods conversations in which you assured Mr. Deckenduff that these things were not morally your fault although you were responsible for them as President?

A. Yes, I think that I did.

1575

Q. And didn't the stormy conversations to which you refer center around that subject of the irregularities in the bookkeeping?

A. Yes, I think most of them did, at least.

Q. Now, were the conversations in which you told Mr. Deckenduff that your credit was just as good as it ever was after May, 1910, or before?

A. I made that statement to Mr. Deckenduff more than once and whether it was made before May or not I know it was made after.

Q. And you felt that that was the situation?

1576 A. Yes.

Q. And you felt that although you might sustain some loss during the year that nevertheless the Schwab-Kepner Company was fully able to meet all of its obligations?

A. You mean by that, Mr. Cohen, that I did not think that our capital and surplus would be wiped out by our losses?

Q. Yes.

A. Yes. You asked me that several times before. We had heavy maturing obligations and it was always doubtful in our extended condition whether we could meet them in time but the fact that we
1577 would eventually meet them it never entered my mind to doubt.

Q. You never had any doubt at any time down to the receivership that in case of liquidation the Schwab-Kepner Company would be able to meet all of its obligations in full?

A. I never had any doubt that we could do that.

Q. And in the course of your conversations with Mr. Deckendorf your reference to that point of view on your part?

A. I don't think that liquidation was ever mentioned and while that was certainly implied by my conversation I don't think that it was ever
1578 specifically mentioned.

Q. As a matter of fact Mr. Deckenhorf never questioned in his conversation with you after May, as he did not before May, the ability of the Schwab-Kepner Company to meet all of its obligations in case of liquidation did he?

A. I don't think that he ever did.

Q. So when you were hesitant in answering the questions concerning Mr. Deckenhorf's statements to you regarding his faith in your moral integrity you had in mind the criticism that Mr. Deckenhorf made of these irregularities that you have testified to?

A. Yes.

1579

Q. Outside of that criticism did Mr. Dockendorf ever make any other criticism of your methods of doing business?

A. I can recall criticisms that Mr. Dockendorf made of me subsequent to the discovery of those but I really can't recall what it was about, but I know that he has.

Q. You testified, Mr. Kepner, that you were the man in the Schwab-Kepner Company who bought goods for the Schwab-Kepner Company, did you decide upon the styles, the numbers and the quantity?

A. Yes.

1580

Q. Did you consult with anyone else as to the quantity you should buy or the style which you should buy?

A. Well, I don't think that the consultation amounted to anything. I may have consulted on certain things.

Q. Substantially every dollar's worth of goods bought were goods purchased as a result of your decision and your decision alone?

A. Yes.

Q. Anybody ever make any suggestions as to how much of a character or style or number of goods that you should buy?

1581

A. Occasionally but not often.

Q. Who would those people be?

A. That would generally come as a question from me to Mr. Victor or to Mr. Corbett as to the quantity on hand of a certain style and the possibility of selling certain styles.

Q. Any suggestion as to the mills you should buy from?

A. Yes, we sometimes had customers complain about the goods from a certain mill and Mr. Victor would come to me and criticise that certain mill

1582 and sometimes the goods would appear particularly good from a certain mill and he would suggest buying more from them.

Q. Outside of Mr. Victor and your customers did anyone else make any suggestions to you except of course the salesmen who wanted to sell your company?

A. No, I can't say that there was.

Q. So far as you know you were the man who, after hearing from your customers and from Mr. Victor, determined what mills you would buy goods from and in what quantities you would buy them?

1583 A. That was practically entirely left to me. I determined that myself.

Q. And you received no suggestions so far as you know from any other source than Mr. Victor and the customers?

A. No suggestion as to what?

Q. As to the mills from whom you should buy and the quantity of goods you should buy?

A. No.

Q. Who determined the prices at which the goods should be sold?

A. I did, ultimately.

Q. Did you confer with anyone else before you
1584 did.

A. Practically, no.

Q. Did you watch the market?

A. Yes, very carefully.

Q. What do you mean by very carefully?

A. I mean that I was very well posted on the market. I knew what the staff was worth, I think, pretty well.

Q. You spoke of selling goods to your competitors at prices below the market price at which they could buy and still making a profit on what they cost you. Can you mention the names of some of your competitors?

A. Well, I suppose in our history we have sold to practically every competitor at a profit and in a great many instances these sales, while made to our competitors went through a broker so that I cannot tell you in the great majority of cases who the actual purchaser was. 1585

Q. In the rough how many do they amount to?

A. About a dozen.

Q. And all of these transactions are through brokers?

A. Not all of them.

Q. But most of them are?

A. Yes, the transactions are generally through brokers. Some times goods are billed direct to the customer but I think in the majority of instances they were billed to the broker and in turn by the broker to the customer. 1586

Q. What was the system when you wanted to sell goods at good prices that you bought low at the mills and wanted to sell below the market? Did you put them through the hands of a broker or did the broker come to you with a proposition?

A. Both systems were employed.

Q. With whom, if anybody, did you confer when you did that, outside, of course, of the broker.

A. There was no one outside of the broker.

Q. You were the sole person who determined whether or not you would sell at the given price? 1587

A. Yes.

Q. Who would determine whether or not credit should be given any customers on goods sold to the customer?

A. Well, we carried credit insurance and the man who actually looked after the credit department varied from time to time. I considered it rather a simple thing because we had an iron clad rule and any exception was put up to me.

Q. What was the iron clad rule?

1588 A. That we wouldn't sell anybody under the insurable limit under our bond.

Q. Were many exceptions put up to you?

A. There were not many exceptions. Of course, there would be a great many exceptions on items but the accounts were not numerous upon which we made exceptions.

Q. Did you ever assign any account to Dockendorf where you knew that the customers had not ordered the goods?

A. Yes.

Q. And how did they arise?

A. Well, I think they only came up in cases of
1589 gray goods which we were not able to release on account of the overdrawn condition of the bleacheries and I wouldn't notify them of the sale of the goods until such times as I could release them and of course that was our condition for some time and at the wind-up there were some accounts of that nature.

Q. I don't know whether you understood the question or not. You would better have it read to you.

Question read: Did you ever assign any account to Dockendorf where you knew that
1590 the customers had not ordered the goods?

A. Perhaps I was not particular clear in my answer. As I stated before gray goods have got a certain market value, from day to day what they are worth, and I had arrangements with certain brokers whereby they would take these gray goods at any time when I needed the money. They would advance me the money on these goods, they would buy the goods to that extent, this would mean under the market but they would be sold by the broker for our account and the difference would be turned over to us periodically, once a month. Now, as

I say, this was a running agreement, it was never written, it was an understanding I had with one or two brokers that I could at any time bill them these goods and they would in turn sell them over again. They had no use for them themselves. 1591

Q. Against whom would you bill the goods, who would be the debtor?

A. The broker.

Q. Is that the account that you would transfer to Mr. Dockendorf?

A. Yes.

Q. The account against the broker?

A. Yes.

Q. Then what you meant was that you didn't know who the ultimate purchaser was. 1592

A. I didn't mean that, exactly. I meant that in some instances these customers, at the time the account receivable was assigned some of these customers had not been notified of these sales because we were not on a position to release the goods and I would not have notified them until we were able to lease them.

Q. I think we are talking of something else.

A. In that respect I considered that the sale had not been consummated.

Q. So far as the broker was concerned it had been consummated with the broker? 1593

A. Well, these specific goods he had no knowledge of, that is all I wish to convey. The agreement to purchase the goods was a running agreement. For instance, we may have had ten bales of 80 square billed to D. O. Tatum at the time of the receivership and he had no knowledge whatever that we had those goods billed to him because we had not sent the goods.

Q. And yet you took those accounts down to Mr. Dockendorf and got money on them?

A. Yes, we might use that money in releasing the goods.

1594 Q. Did that occur before a period of say about two weeks before the bankruptcy?

A. Oh, yes.

Q. That is to say, you would take accounts where the brokers didn't even know you were going to ship and get money on those accounts from Mr. Dockendorf?

A. Well, in effect that is correct.

Sworn to before me this 24th day of February, 1911.

1595 Adjourned to Wednesday, March 1st, 1911, at 10:30 P. M.

1596

UNITED STATES DISTRICT COURT, 1597

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on petition of John E. Dockendorf, before Edwin G. Adams, Referee in Bankruptcy, as Special Master at No. 165 Broadway, New York City, on Wednesday, March 1st, 1911, at 10.30 A. M. 1598

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF, Attorney for Receivers.

JOHN B. KEPNER, recalled.

Cross examination by Mr. Cohen:

Q. Mr. Kepner, can you tell us approximately the amount of your daily loan balance with Mr. Dockendorf during the first year that you were doing business with him? 1599

A. I can't think of any way in which I could recall that Mr. Cohen.

Q. Can't you give us your recollection as to any figure at all?

A. No, I can't except that it was smaller than the last year.

Q. That is what I want to get at. The last year of your business dealings with Mr. Dockendorf the daily loan balance was much more than at the beginning?

A. Oh, yes.

1600 Q. Approximately how much?

A. Why, I can't answer that at all, Mr. Cohen. I can't think of any way in which I can get at it.

Q. But you know they increased?

A. Yes.

Q. Now, did you familiarize yourself with Mr. Dockendorf's account about April of 1910?

A. Well, I think I probably did.

Q. Do you know what the loan balance at that time was, approximately?

A. No, I can't answer that at all.

Q. Do you know whether the loan balance increased or decreased from April down to the time
1601 of the failure?

A. I am not certain but I have an impression that it increased.

Q. You have already testified that you got more and more money from Mr. Dockendorf; did you mean that the loan balance kept increasing?

A. No, I don't remember testifying as to that before?

Q. Did your loan balance increase?

A. Yes, I think that was the tendency.

Q. And it was a gradual increase was it down to the time of the failure?

A. Yes, I think—of course it fluctuated—but I
1602 think the general tendency was an increase.

Q. So that at the time of the failure the total amount you owed Mr. Dockendorf was more than the total amount you owed him in April of that same year?

A. That is my general impression, Mr. Cohen.

Q. And that was your impression during the six months prior to the bankruptcy?

A. Well, I don't know that it was brought to my attention at that time. If I had thought about it it undoubtedly would have been.

Q. Now, there was a certain margin of equity

in the collateral which you pledged with Mr. Dockendorf that was to be observed was there not?
A. Yes. 1603

Q. Did you from time to time in the year 1910 seek to increase the amount of your borrowings, the percentage of the amount of the collateral?

Mr. Wolf: I object on the ground that it calls for a conclusion.

Overruled.

A. As I understand the question Mr. Cohen, we had an agreement with Mr. Dockendorf to borrow a certain percentage of our collateral and you want to know whether we sought to increase the percentage of borrowings? 1604

Q. I mean not by agreement but by actual practice. For example, you were entitled to a certain amount based upon the collateral held?

A. Yes.

Q. Didn't you try to get more than you were technically entitled to under your agreement from time to time?

A. Of course, I recall that I wanted that. Whether I made such an application to Mr. Dockendorf or not, actually, I cannot say.

Q. Were you entitled to borrow money as you understood it upon the overdues?

1605

Mr. Wolf: I object to that as calling for a conclusion of the witness.

Overruled.

Question read.

A. No, we were not.

Q. Now, you were examined under 21A by Mr. Wolf, were you not?

A. Yes.

Q. Didn't you testify in that proceeding that

1606 Mr. Dockendorf for a long period of time gave you more money than you were entitled to?

A. If I was asked that question I answered it that way.

Q. That was the fact?

A. Yes.

Q. During the last six months of your business with him you did get more than you were entitled to under your agreement?

A. Yes.

Q. Do you know how much the overdues amounted to in April, 1910?

1607 Mr. Wolf: I object to that as calling for a conclusion of the witness, calling for the conclusion of the witness regarding a multitude of transactions and the conclusion of the witness is not the best evidence.

Question withdrawn.

Q. Did you in April of 1910 make any investigation to ascertain how much the overdue accounts held by Mr. Dockendorf as collateral security amounted to?

A. No, I don't recall making any personal investigation.

Q. Did you have anyone make an investigation
1608 for you?

A. I think about that time a general investigation of Mr. Dockendorf's account was made, but I don't recall any figures.

Q. Were you informed as to the amount?

A. I can't answer as to that, I don't recall.

Q. You testified at the last hearing under cross examination that there were a number of accounts where the credits were not passed through, did those cases increase the total amount of the overdues?

A. No, they wouldn't operate in that way.

Q. Did you have any conversation with Mr. Dockendorf with reference to the bleachery overdraft? 1609

A. Yes.

Q. Did Mr. Dockendorf ever tell you that you must arrange your borrowings so as to reduce the amount of that bleachery overdraft?

A. Yes.

Q. How much did the bleachery overdraft amount to in May or June of 1910?

A. I can't answer from memory.

Q. What is your best recollection?

Mr. Wolf: I object to that as calling for a conclusion of the witness, a conclusion regarding a multitude of transactions as to which the testimony of this witness is not the best evidence. 1610

Question withdrawn.

Q. Was the amount of the bleachery overdraft discussed by you with Mr. Dockendorf a that time?

A. I think it probably was.

Q. What is your recollection of the amount you stated to Mr. Dockendorf or he stated to you?

A. I really can't recall the figures at all.

Q. Do you recall having a conversation with Mr. Dockendorf in August in regard to the bleachery overdraft? 1611

A. I don't recall any specific time. I couldn't unless there is some means of refreshing my memory. I can't recall any specific time when the bleachery overdraft was discussed. It was discussed a number of different times.

Q. And you can't recall any amounts which you mentioned at any of these conversations, or which Mr. Dockendorf mentioned?

A. The only amount which I can recall on the bleachery overdraft was the final amount, approximately.

1612 Q. What was that?

A. $125,000 I think.

Q. What date was that?

A. That was immediately preceding the receivership.

Q. How long before?

A. I think a few days.

Q. How did that $125,000 of overdraft arise?

A. Well, the overdraft arose from our ordering out more goods from the bleachery than we ordered in.

Q. There wasn't $125,000 of overdraft in August was there?

1613 A. No, I think not.

Q. Was it anywhere near that amount?

A. I think it was probably considerably less.

Q. Now, you know about these bills of lading, Mr. Kepner, which you turned over to the bank that covered accounts receivable which you had assigned to Mr. Dockendorf?

A. I recall the transactions you refer to, yes.

Q. How much did they amount to?

Mr. Wolf: I object to that on the ground that Mr. Cohen and the witness may understand, but I don't recall that it was brought out in the examination of this witness.

1614 Objection withdrawn.

A. I think that—I don't know whether I have any right to answer this question in this way but I think the way you stated the proposition it wasn't fair to the Schwab-Kepner Company. You stated the question and I said that I recalled the transactions but the way you stated the question didn't indicate the transactions.

Q. Well, you state the transactions in your own way.

A. Well for some time we had carried with the various banks with whom we did business an over-

draft which was possible by what is known as kiting checks and we had several bank accounts. In ordering these goods from the bleachery we had to send the money to reduce the loan or merchandise equivalent to the amount of goods we shipped out and we would send our check in some instances reducing the loan, depending on getting the money from Mr. Dockendorf on these accounts to make that check good when it came back to New York to our account or to Philadelphia, wherever it might be. This bank overdraft got up to a considerable amount, I think it amounted to $50,000. 1615

Q. Arising by the kiting of checks?

A. Yes. I may not be accurate in that amount but it was a considerable amount like that and at one time, during Mr. Dockendorf's absence from the city we put the collateral down at his office and they were unable to make that loan on the collateral and as a consequence we were unable to meet the checks when they came back and they were protested and the bleachery who shipped these goods stopped shipment, that is, they held them up in transit and the bills of lading to which you refer had reference to the Sales Bleachery who had shipped goods in this way. A representative of the Slater Trust Company who loaned the money on the Sales Bleachery account called to see me for an explanation of the transaction and the bills of lading covering those shipments which they had made I gave back to them. 1616 1617

Q. How much did they amount to?

A. I think they amount to between twenty and thirty thousand. I think that amount is easily ascertained. I don't think it amounted to thirty thousand, it was probably about twenty thousand.

Q. These bills of lading represented goods that had actually been shipped from the bleachery?

A. Yes.

1618 Q. And were covered by accounts receivable actually transferred to Mr. Dockendorf?

A. Yes.

Q. And so, in the first instance, the bills of lading belonged to Mr. Dockendorf, did they not?

A. Well, I think that might be true. That is a delicate matter to decide. I hadn't completed my statement regarding that, I was going on with that bill of lading thing. The bleachery sent us original and duplicate bills of lading and it so happened that the bills of lading which I gave to this representative of the Slater Trust Company were the duplicate bills of lading and my
1619 reason for giving them back to them was that we were rather helpless in the matter. They had stopped the goods, they had not arrived at our customers, they were shipped in care of our truckman and he was not able to get the goods so that we could not get possession of them and I had been in conference prior to that time with Mr. Townsend, Mr. Dockendorf's attorney, as Mr. Dockendorf wasn't here and of course, we were in a very dangerous position, we having this bank over draft and our checks protested, and when Mr. Williams who was Mr. Dockendorf's representative discovered that I had delivered
1620 these duplicate bills of lading to the Slater Trust Company he told Mr. Townsend, or Mr. Dockendorf's office at least, I think Mr. Townsend, of the transaction. I don't know where I discovered that Mr. Townsend objected to it but at any rate I think Mr. Williams told me—I immediately called up Mr. Townsend and told him that we had the original bills of lading in our possession which I was going to turn over to him and I said I thought if Mr. Dockendorf had been here he would probably endorse the action I had taken.

Q. Have you finished your statement now? 1621

A. Yes, I think that covers it.

Q. Now, if the accounts receivable covered by those goods were transferred to Mr. Dockendorf, did you not feel at that time that it was your duty in the first instance to decline to turn those bills of lading over to the Slater Trust Company and allow them and Mr. Dockendorf to fight it out?

A. I would have been perfectly willing to have done that Mr. Cohen. As I stated before I didn't think Mr. Dockendorf would have advised that if he had been here.

Q. I didn't ask you what Mr. Dockendorf, who 1622
was away from the city, would have advised. I asked you what you regarded as your obligation in the premises?

A. Why, my obligation in the premises was, I think, to carry it the way I did.

Q. You thought it was your duty to turn those bills of lading over to the Slater Trust Company?

Mr. Wolf: I object, that is not the testimony of the witness, he testified that he turned over the duplicates.

Witness: I told Mr. Townsend that the originals were there and they could have 1623
them if they wanted them.

Master: Were where?

A. At our office.

Q. And didn't Mr. Townsend tell you to send those originals down to Mr. Dockendorf's office right away?

A. I don't know whether he did or not.

Q. Why didn't you do it?

A. I don't know but what we did.

Q. You don't know whether or not they ever got the original bills of lading?

A. No, they were always available.

1624 Q. Available where, at your office or Mr. Dockendorf's?

A. At our office.

Q. Why didn't you send them down to Mr. Dockendorf's office?

Mr. Wolf: Objected to, there isn't any testimony in the record that he didn't send them there.

Q. You don't know to-day whether those original bills of lading ever went to Mr. Dockendorf's office or not?

A. I do not know, no.

1625 Q. Was it not your duty when you assigned accounts receivable to Mr. Dockendorf with the goods subsequently shipped from the bleachery to turn over the bills of lading to Mr. Dockendorf immediately on their arrival at your place?

Mr. Wolf: Objected to as too broad and indefinite, particularly that part as to Mr. Kepner's duty.

Q. Didn't you regard it as your duty, when you borrowed money on accounts receivable the goods to be shipped from the bleachery to turn over the bills of lading to Mr. Dockendorf as soon as the
1626 bills of lading were received at your office?

Mr. Wolf: Objected to unless duty is defined as a duty under contract or a moral duty.

Overruled.

A. That was part of our contract.

Q. And you regarded it as part of your duty, did you not?

A. Undoubtedly. I don't know as it was any special duty outside of the fulfillment of our contract.

Q. Now, did not the return of those bills of lading and the recapture of the goods reduce the amount of security which you turned over to Mr. Dockendorf? 1627

A. Well, I can't answer that question Mr. Cohen, except by giving it as my opinion in the matter that I don't think their position was weakened any after the bleachery stopped shipment. Mr. Dockendorf was in just as good a position to fight their claim if he had a right and title in the goods as he was before.

Q. Now, when did you begin this practice of kiting checks?

A. Well, it is quite an old practice.

Q. Had the Schwab-Kepner Company always kited checks? 1628

A. We have never made a general practice of kiting checks. It came to be quite—we had what we called our bank overdraft for quite some time prior to the receivership.

Q. Now, isn't it a fact that that amount was never over five or six or seven thousand dollars up to the time that Mr. Dockendorf left?

Mr. Wolf: What amount?

Mr. Cohen: The amount of the kiting.

A. Oh, no, it was considerably more than that. Mr. Dockendorf hadn't been gone very long when it amounted to $50,000, and it was a gradual increase it was immediate, it did increase gradually from day to day but in a small amount. 1629

Q. Didn't you, as a matter of fact, tell Mr. Dockendorf just prior to the time when he left that the total amount did not exceed $5,000?

A. No, I never told him that.

Q. Or $8,000?

A. No, it was probably considerably more than that.

Q. Now, what was the date when you returned

1630 these bills of lading or turned over the duplicates to the representative of the Slater Trust Company?

A. The date?

Q. Yes.

A. I can't recall the date.

Q. With reference to the filing of the petition in bankruptcy, when was it?

A. I can't tell the time. It is very easily ascertainable. It was while Mr. Dockendorf was away

Q. How long was it after Mr. Dockendorf had left?

A. Well, I know it was time enough for his
1631 boat to get to the Azores.

Q. Now, don't you recall that Mr. Dockendorf sailed on Saturday and this situation occurred on the following Tuesday?

A. I can't recall, but I think it is perfectly probable that that was the case. I think that the situation was a day or two or three in clearing up, but the actual day of the turning over of those duplicate bills of lading to the Slater Trust Company was after Mr. Dockendorf had arrived at the Azores.

Q. Do you recall approximately how much money the Schwab-Kepner Company got from
1632 Mr. Dockendorf within the two or three days immediately after his departure?

A. I can't recall any amount.

Q. Isn't it the fact, Mr. Kepner, that on the Friday, Saturday and Monday, at the time and after the time of Mr. Dockendorf's departure you got as much as $50,000?

A. In three days?

Q. Yes.

A. Well, I think—that seems like a large amount. I can't recall any amounts at all. I don't think that it is an impossible amount, it is possible that it may have been as large as that.

Q. Whatever amount you did get you got on the security of accounts receivable that never came into existence because of this recall of goods by the bleachery, did you not? 1633

Mr. Wolf: Objected to on the ground that it assumes, what hasn't been testified, that the accounts assigned in those two or three days were the accounts not shipped.

Question withdrawn.

Q. Did the recall of the bills of lading affect any of the accounts receivable which you transferred to Mr. Dockendorf immediately following his departure?

A. I don't know that it is possible for me to answer that exactly. I think it is possible that those accounts were at least a part. Some of these were accounts for which we did not receive money from Mr. Dockendorf owing to their inability to make the loan, either refusal or inability. As I understood the question it was whether the return of the bills of lading affected any of the accounts which we had received money from Mr. Dockendorf on during those few days. 1634

Q. No, I didn't ask you that question.

Mr. Cohen: I move that the answer be stricken out. 1635

Motion allowed.

Question read.

Mr. Cohen: You can answer that yes or no.

A. Well, I think I did answer it.

Master: Can you answer it yes or no?

A. No, I think I can't. For this reason, there were some accounts which we had sent to Mr. Dockendorf on which we didn't get money at that time, because I think our loan balance had

1636 reached such a point that they couldn't extend us any further in Mr. Dockendorf's absence. Now, whether some of those goods shipped were part of those accounts I can't say now without an investigation.

Q. Now, will you please explain this process of kiting checks?

A. We have several bank accounts, one in Philadelphia, one in New York and one in Providence and one in Amityville, L. I., and the Slater Trust Company in Pawtucket.

Q. How many did you have altogether?

A. That embraces them all.

1637 Q. How many, five?

A. Five, I think, yes. We would, in ordering the goods from the bleachery as I stated before, either put in goods or reduce the loan. When we hadn't the goods to put in we would write to the bank who had made the loan, "Enclosed, please find our check for so much reducing our loan so much," and when the bank was so notified, they would, of course, notify the bleachery and we were thus able to ship those goods. We would send that if we wanted to ship the goods from the Sales Bleachery we would send our checks on the Bank of Philadelphia to the Slater Trust

1638 Company for the amount of goods which we wanted to release and then in some instances we would fill that gap if we hadn't time to turn around we would fill that overdraft in Philadelphia by a check on our New York bank. Of course, that hole had to be filled sometime and as soon as we got the money from Mr. Dockendorf we put it in the bank where the overdraft occurred.

Q. Well, then, the amount you got from Mr. Dockendorf had to be at least the equivalent of the amount you paid to the bank to reduce the bleachery loan?

A. Yes.

Q. And you were taking the money of Mr. Dockendorf and using it for the purpose of meeting the overdrafts on your bank account which you made for the purpose of reducing the overdraft at the bleachery? 1639

A. Yes.

Q. Before you could get $100 worth of goods at the bleachery you had to reduce your loan at the bank by $100?

A. Either that or the equivalent in merchandise.

Q. And if you got $100 worth of goods out of the bleachery, you didn't get $100 from Mr. Dockendorf, did you?

A. It acted the same way. We would have to send $80.00 to reduce it and theoretically we would get $80.00 from Mr. Dockendorf. 1640

Q. Then the effect of the situation was that you were merely changing loans, wasn't it?

Mr. Wolf: I object, calls for a conclusion and is not in accordance with the testimony.

Objection sustained.

Q. How did you think you were improving Mr. Dockendorf's situation by that kind of a process?

A. I don't think that I testified that I thought I had improved Mr. Dockendorf's situation. 1641

Q. Then your answer is that you didn't think you were improving his condition, is it?

A. There was no such intention.

Q. No such intention on your part?

A. No.

Q. Nor on Mr. Dockendorf's, so far as you know.

A. I can't answer as to Mr. Dockendorf. I don't see how it could improve his position, though.

Q. Then whose condition was it improving,

1642 this process of kiting checks from one bank to the other?

A. Well, of course, the actual process of kiting checks was equivalent to reducing our—our endeavor to reduce our loans at the bleacheries and condense our business. My intention was to cut down the amount of inactive merchandise represented by our loans by banks, merchandise at the bleacheries, and I was converting it as fast as I could into accounts which would liquidate themselves so that our condition—it became necessary in accomplishing that to kite the checks and our condition was so extended that I couldn't do it

1643 in any other way.

Q. That is, you were trying to reduce the merchandise at the bleacheries to accounts receivable?

A. Yes.

Q. And by reducing them to accounts receivable reduce your loans at the banks having merchandise at the bleacheries as security?

A. That is right.

Q. So that you were trying in this process of kiting checks, if I understand you correctly, to reduce your loans at the banks?

A. Yes.

1644 Q. And that was your main purpose?

A. Yes.

Q. And you had to resort to kiting checks in order to accomplish it?

A. Yes.

Q. You say Mr. Dockendorf's condition wasn't being improved by that process?

A. Yes.

Q. Was it becoming less secure?

A. Well, I think that probably the reduction of the merchandise at the bleacheries, the condition of Mr. Dockendorf's second lien on the merchandise

at the bleacheries, it tended to rather impair his 1645
condition that way.

Q. That was the effect of what you were doing?

A. I think so, yes. I don't know as it impaired his condition but it impaired the amount of equity Mr. Dockendorf had because it would reduce the lien, the percentage of his equity was not impaired but the amount was reduced by our reducing our bleachery loans.

Q. In other words, the collateral which he held was becoming less and less secure in this process?

Mr. Wolf: Objected to, that is not the testimony of the witness.

Q. I'm asking if that is so? 1646

A. No, that isn't so. As I testified, the amount of Mr. Dockendorf's collateral which was our equity in the bleachery goods was becoming less but the percentage of course was no less. The amount, the actual amount of collateral which Mr. Dockendorf held as this second lien on the merchandise was becoming less of course by our reducing the loan.

Q. Wasn't it the fact, Mr. Kepner, that if this process of kiting checks was cut short at any point by the discovery of the banks, it was inevitable that it would cut out a considerable portion of the accounts receivable that you were transferring to 1647
Mr. Dockendorf from day to day?

A. Inevitable is pretty strong but it worked out in the Slater Trust Company matter. If the bleacheries could hold up the goods before they were actually delivered to customers why of course that would impair his collateral.

Q. Was that the final result?

A. Yes.

Q. To what extent was his collateral impaired in that process?

A. Well, I think about $50,000 possibly. I am

1648 not sure as to that but I think it was some considerable amount like that.

Q. So that at the conclusion of the transaction as far as you can recall he had $50,000 less collateral than he had before?

A. Well, I will have to amend that testimony. Our bank overdraft was about $50,000. That was not all in one bank, it was in several. Now, in the case of the Sales Bleachery and Slater Trust Company which represented the same loan, they were unable to recall an amount sufficient to make up the amount of the overdraft which finally reverted to the Slater Trust Company and the same occurred
1649 with the Bank of North America—no I am not sure as to that. At that time it was impossible for us to tell where the trouble would hit us, it depended upon which bank would pay against uncollected funds and we couldn't tell which it was likely we were going to have the trouble in. It finally worked out the Slater Trust Company took the bulk of this overdraft and they were unable to recall enough goods to make good that overdraft.

Q. Leaving out of account for the present the assignment of whatever equity there was at the bleacheries to Mr. Dockendorf, the fact is that if any of the banks shut down at any particular
1650 moment it would destroy those accounts receivable most recently transferred to Mr. Dockendorf?

A. I think it would be likely to result in that, depending entirely upon how much of the shipment it had made the bleachery was able to recall.

Q. But they wouldn't ship out goods unless the loan was reduced or new goods coming in?

A. That is right.

Q. And everything depended then upon the banks accepting the checks which you were drawing upon other banks and which you have described as kiting checks?

A. Yes.

Q. And the moment that process stopped, that 1651
moment you were in a hole?

A. Yes.

Q. Now, didn't that process become acute during Mr. Dockendorf's absence?

A. Yes.

Q. And the crisis arose during his absence, didn't it?

A. Yes.

Q. Now, did you have a conference with him immediately upon his return home?

A. I know it was very shortly after his return, yes.

Q. And at that conference, as a result of that 1652
conference, Mr. Dockendorf gave you some money without any additional security for the purpose of assisting you out of your difficulties and enabling you to turn around?

A. I know that we got some money from Mr. Dockendorf after his return.

Q. Didn't you get $7,500 from Mr. Dockendorf?

A. I can recall a loan of about that amount, yes.

Q. Didn't Mr. Dockendorf give you $7,500 personally for the use of the company and say "Here Kepner, this will enable you to turn around until you can find out where you stand," or words to that effect?

A. I don't know that I thoroughly understood 1653
your question. I think that that amount you mention was given to the Schwab-Kepner Company. Our condition of course was very acute at that time and there was something said about our looking over the situation and seeing how we stood, something to the effect of what you remarked, there was some such remark made.

Q. Prior to that time had you transferred to Mr. Dockendorf those accounts that you testified to at

1654 the last hearing representing goods billed to the broker for which you had received no orders?

A. Orders of that kind were—

Question read.

Mr. Colum: Answer yes or no.

A. There had been some such assignments prior to that time, yes.

Q. And hadn't you told Mr. Beckendorf personally, on your word of honor that these accounts really represented valid accounts?

A. I can remember discussing these gray sales with Mr. Beckendorf.

1655 Q. Can't you answer that question yes or no?

A. I can't answer that and say that I said anything except the truth in the matter. Mr. Beckendorf knew that these accounts had not been delivered and that we hadn't—whether he knew or not whether we had rendered invoices for the goods I can't answer although I think that he knew it.

Q. You don't know whether he knew it or not?

A. No, I know that he objected to that feature of the business.

Q. When.

A. Why, on more than one occasion.

Q. What feature do you refer to?

1656 A. The idea of billing goods to these people. They would not take the goods without a bill of lading and we couldn't release them until we had actual possession.

Q. How often did he object to that method of doing business?

A. I think whenever at some times it was necessary for us to use a good bit of such business, that is to say, we hadn't the specific orders in our finished goods at some day when we needed the money and when these accounts would get large Mr. Beckendorf would say that he—he would object to it. In a general way Mr. Beckendorf knew of these

accounts of gray goods. I don't think he knew en- 1657
tirely, or perhaps he didn't know as much as I thought he did about such accounts. He only knew that there was a certain amount of goods which hadn't been shipped and all of these accounts were embraced in that amount.

Q. This was a sort of process of kiting goods as well as kiting checks, shipping goods out on the expectation that they would be taken by the customers of these brokers without any obligation on the part of any customer to take them?

A. I didn't testify that way. I said that we had running agreements with these people that they would take these goods at any time, practically— 1658

Q. Who did you have these agreements with? Give me the names of them and then go on with your statement.

A. These agreements we had with, principally with H. O. Tatum, C. H. Pope & Company and Ferguson-McKinney Company.

Q. Is that all?

A. That would probably cover all the transactions.

Q. Well, now go on.

A. We always billed these goods at under the market price and the understanding was that these brokers would sell them at the market or as near 1659
as they could and return to us the difference, so that, under that arrangement they would take goods at any time because they were easy to convert into cash.

Q. Did you have such an arrangement with H. O. Tatum?

A. The arrangement wasn't with him personally.

Q. With whom was it made?

A. Generally made with a representative of his office who called upon me.

Q. What was his name?

A. Snyder.

1660 Q. First name?

A. F. M. Snyder.

Q. Which member of the firm or what representative of the firm of Ferguson-McKinney Company did you have such an arrangement with?

A. That was with Wm Ferguson.

Q. Hadn't he been an officer of the Schwab Kepner Company at one time?

A. Yes, nominally.

Q. And which member of the firm of C. H. Pope & Company?

A. That arrangement was made generally with the representative who called on us, Nottelmann.

1661 Q. First name?

A. I think it is—I don't know, I called him Jack but I think that was not his name, just a nick name.

Q. There was no agreement in writing of any kind, was there?

A. No.

Q. Was anyone besides yourself a party to it?

A. No.

Q. Just oral conversation with these people?

A. Yes.

Q. Where would the goods physically remain until the name of the customer was ascertained and

1662 they were billed?

A. You misunderstood me, these goods were billed to one of the parties I have mentioned.

Q. To one of the brokers?

A. Yes.

Q. Where would the goods physically remain?

A. Wherever they happened to be at the time of the billing, generally in the bleachery.

Q. You are talking about gray goods now?

A. That is the fact.

Q. Gray goods at the bleachery?

A. Yes.

Q. And the goods were billed to these various brokers? 1663

A. Yes.

Q. And if the broker couldn't sell them they were to come back to you?

A. That did result, I think, occasionally, but not often.

Q. Wasn't it the fact that the real arrangement was that you merely placed these goods in the hands of the broker for sale?

A. Well, no, I don't think that is so. They had the right—they were bound under their oral agreement to return to us the profit over and above the price we billed them to them at and what they 1664
actually sold them for and as a reciprocal arrangement I would have protected them by taking the goods back or making them an allowance if the market had in the meantime revealed.

Q. Isn't that precisely the arrangement that you make with any broker when you turn goods over to him for sale as a broker?

A. No, they are not billed to them as a rule until such time as they sell them.

Q. Outside of the mere act of billing them isn't that practically the arrangement that you make with any broker you turn gray goods over to for sale?

1665

A. I don't think there is any material difference.

Q. Isn't it a fact that you did it so that you might have some kind of accounts receivable to turn over to Mr. Dockendorf in order to get money from him?

A. Yes, I think possibly that is so.

Q. Didn't you think that was pretty precarious kind of security to give Mr. Dockendorf for good money that he was giving you?

A. If you want my opinion I think it probably was. It was no more precarious than any other part of the $125,000 worth of goods which had not

1666 been shipped, whether these other items had been actually sold or not—the finished goods had been sold to our regular trade.

Q. Didn't that $125,000 as a matter of fact include the forty or fifty thousand of bills of lading the duplicates of which you turned over to the Slater Trust Company?

A. That overdraft was enhanced by that operation, that is to say, part of that $125,000 bleachery overdraft was caused by that transferring of the forced loan from the banks to Mr. Dockendorf.

Q. What do you mean by the forced loan?

A. This overdraft.

1667 Q. That $50,000 was included in the figure of $125,000 which you gave us?

A. Yes.

Q. Now, isn't it the fact, Mr. Kepner, that there were goods at the bleacheries at or about the time of this bills of lading incident which had been set aside for shipment pursuant to orders, where you cancelled the order for shipment?

Question withdrawn.

Q. Wasn't this the process of your doing business, Mr. Kepner, that you would send to the customer, the purchaser of the goods, a release upon
1668 the bleachery for the amount of goods, wasn't that one of the steps?

A. We did use that method of making a delivery. That wasn't one of the steps in a case where we ordered the goods out.

Q. You would order the goods out direct for shipment to the customer or you would send to the customer a release so called which would enable him to get the goods from the bleachery whenever he wanted them?

A. As a rule those releases were not sent to the customer, they were sent to the bleachery from whom we released the goods.

Q. For delivery to the customer?

1669

A. The release would be worded, for instance, "Cold Spring Bleacher. Please hold order of so and so bill number so and so" and that would represent goods assigned or set aside for a particular customer.

Q. And isn't it a fact that at or about the time of this bills of lading incident you sent direct to the bleachery to cancel releases or orders which amounted to about $50,000 worth of goods that had been set aside for customers, or some similar amount?

A. That I can't recall, if you have anything in mind that you can give me something to refresh my recollection.

1670

Q. Don't you recall sending direct to the bleachery to cancel releases previously sent?

A. No, I don't recall any such transactions.

Q. You don't?

A. I don't mean to say that we never did any such thing. It is quite likely that we did, but I don't recall any such specific operation as you mention of $50,000 or anything of that kind.

Q. Have you refreshed your recollection as to the total sales during each year of the Schwab-Kepner Company?

A. No, sir.

1671

Q. I don't know whether I asked this question before or not, but I will ask it again to cover it. Were you ever presented with any printed form of financial statement which you were asked to fill out by any of your creditors?

A. I don't think we were ever presented with any such blank by any of our creditors. I think we may have had them from the agencies but we never used them.

Q. No credit man from whom you sought credit of mills or anywhere else ever presented you with a printed form?

A. No, I don't think they ever did.

1672 Q. Have you seen such printed forms?

A. I don't think I have except the agency forms

Q. You know what I mean?

A. Yes, I think I do.

Q. And those forms usually contain questions relating to borrowing on collateral?

A. Yes.

Q. But you never filled out any such forms?

A. No, I never did.

Q. Nor were you asked to fill out any such forms?

A. We would get a communication from an agency, such as "We have an inquiry on your con-
1673 cern and will you kindly furnish us with a statement of affairs," and they may have referred to the blank enclosed.

Q. But you didn't use that blank?

A. I never used the blank.

Q. You would send that statement back from the books of the assets and liabilities?

A. Yes, I usually had them, I just made a copy of our last statement and sent them that.

Q. And after sending that copy would you receive any other inquiry as to the details of your assets and liabilities?

A. No.

1674 Q. Or as to how they were liquidated or what collateral was given or what money was borrowed on collateral?

A. No.

Q. Never received any request of that sort?

A. No.

Q. When did you first consider the filing of the petition in bankruptcy?

A. That was after I consulted Mr. Crisp, just a few days prior to the actual filing.

Q. Up to that time had you consulted anybody with reference to bankruptcy proceedings against the Schwab Kepner Company?

A. No.

Q. Had you any idea of any bankruptcy pro- 1675
ceedings up to the time they were instituted?

A. No.

Q. Who is the Mr. Crisp to whom you refer?

A. W. B. Crisp.

Q. Is he the attorney who filed the petition against the Schwab-Kepner Company?

A. I think—no, he didn't appear as such. I think that he had a claim against the Schwab-Kepner Company for legal services rendered which was assigned to some other attorney or somebody else who appeared as one of the petitioning creditors.

Q. The Mr. Crisp you refer to is an attorney, he was your attorney, was he not?

A. Yes. 1676

Q. I mean you went to him for advice?

A. Yes.

Q. When the situation got to a point where you couldn't handle it any longer you went to Mr. Crisp?

A. Yes.

Q. And then the petition in bankruptcy was filed against you?

A. Yes.

Q. Before that time you hadn't had any talk with Mr. Crisp about the filing of any petition in bankruptcy, had you?

A. Never. 1677

Q. Or with anybody else?

A. No.

Q. Now, what was it that caused the crisis?

A. Well, what probably caused the crisis was n estimate that Mr. Williams made of our con- ition and when I saw that our losses had been great as to render us practically insolvent, I ought it was time to quit. I think probably I had not been sick at the time I might have ken more time to investigate it.

1678 Q. Were you sick at that time?

A. Yes.

Q. Mr. Williams, then, was the man who informed you of your condition?

A. Yes.

Q. Was that the first time that you learned of your condition?

A. I presume that I was informed—I hadn't had a statement of our condition prior to that time except on the January 1st preceding. Mr. Williams had never made any estimate to me before showing that we were insolvent or near it.

Q. He never told you anything of that sort be-
1679 fore this time?

A. No.

Q. And when was this time?

A. It was just a few days, it was only two or three days before the petition in bankruptcy.

Q. During the year 1910, had you taken any stock at all of your merchandise?

A. I don't think we took an inventory. We may have done so, I am not sure. Of course, we did on January 1st.

Q. After that have you any recollection of any stock inventory being taken?

A. I don't know that there was any official in-
1680 ventory taken although I think it was done just as a matter of checking up our merchandise in our converting department, Mr. Corbett's department.

Q. If that was so, how did it happen that you waited until a few days before the bankruptcy to find out that you were insolvent?

A. I don't say that we were insolvent at that time. It required an estimate, we had to eliminate certain of our assets and reduce them to show insolvency even at that time, but as I said that was the effect on me of Mr. William's statement and the fact is, I was at home sick and

he called me up on the 'phone and I came in after 1681
he got a statement out. I knew from the tone of his voice there was something important and I came into New York, and I came to the conclusion that the best thing for us to do was to stop.

Q. Do you remember Thursday, Thanksgiving Day?

A. Yes.

Q. Were you at home that day?

A. Yes.

Q. And do you remember that the day after you saw Mr. Dockendorf?

A. No, I can't recall seeing him the day after Thanksgiving.

Q. Don't you remember that Mr. Dockendorf 1682
returned from his trip after Thanksgiving Day?

A. I do recall that Mr. Dockendorf's absence terminated about the time of a holiday, and that is all I can recollect. I remember that that was so, of course that could be fixed.

Q. Well, do you remember it was the legal holiday immediately preceding the filing of the petition in bankruptcy?

A. Of course, it must have been, because Thanksgiving came about that time.

Q. The petition was filed on Tuesday, November 29th?

A. Yes. 1683

Q. And Thanksgiving Day was the Thursday preceding, the 24th?

A. Yes.

Q. Between Thursday the 24th and Tuesday the 29th, the date the petition was filed, Mr. Dockendorf returned?

A. Yes.

Q. Isn't that so?

A. My recollection is that Mr. Dockendorf actually got into New York the day before Thanks-

1684 giving Day, if I recollect correctly, but I didn't see him I think—I am hazy about this—I didn't see him until the day after Thanksgiving.

Q. Isn't that the time when he gave you the $7,500 until you could turn around and see what the real situation was?

A. I am not certain as to the amount, but I remember that was so.

Q. If that was the amount then that was the time?

A. Yes.

Q. It was a large amount anyway?

A. Well, we didn't consider that a very large
1685 amount. I would not say it was likely to be larger than it was.

Q. It was in that interval after you got the money from Mr. Dockendorf that Mr. Williams gave you this information about your condition?

A. That information was on Sunday night.

Q. Now, didn't it require some overtime work on the part of Mr. Williams to get the data?

A. Yes, he called up, I think probably about seven o'clock and he had worked all the previous night.

Q. All night?

A. Yes, hadn't gone home at all.

1686 Q. And it was in that way that he discovered what he reported to you?

A. Yes.

Q. Then you went to Mr. Crisp?

A. I think I probably went to Mr. Crisp on Monday.

Q. Did you not state to Mr. Dockendorf that if you got this amount of money you would have time to look into your affairs and that you still thought you might be able to have a plan by which you could continue in business?

A. I don't wish to deny or affirm that. It was

my opinion at that time that we would be able to pull through. 1687

Q. Didn't you say so to Mr. Dockendorf?

A. I don't know that I did.

Q. If Mr. Dockendorf says that you did, would that change your recollection?

A. Well, I think it is quite likely that I did.

Q. And it was after you got that money that Mr. Williams completed his work of examining into the books which took him all of Saturday night?

A. Yes.

Q. Then you made up your mind to consult Mr. Crisp?

A. Well, that might have followed. I don't 1688
know that I made up my mind to consult Mr. Crisp at that time. My mind was only made up to stop business, that was all.

Q. The petition was filed on Tuesday and you got the report of Mr. Williams, I think you said, Sunday night?

A. Yes.

Q. Now, it was between Sunday night and Tuesday that you saw Mr. Crisp?

A. Yes.

Q. What day was it?

A. I said before I think probably it was Mon- 1689
day that I saw him.

Q. Morning or afternoon?

A. I think afternoon.

Q. You didn't go back to Mr. Dockendorf and give him the $7,500 or whatever amount of money it was, did you?

A. No.

Q. Did you come back and offer to return any of the money which you had received before that time?

A. No, I did not.

1690 Q. Did you go and tell Mr. Dockendorf that you would have to stop business before you saw Mr. Crisp?

A. Yes.

Q. What time was that?

A. I saw Mr. Dockendorf the first thing Monday morning.

Q. What did you tell him?

A. I told him my intention of stopping.

Q. Did you tell him what you were going to do?

A. I said I thought it was impossible for us to continue.

1691 Q. Was that all you told him?

A. Well, the conversation lasted for quite some time and I, of course, said more than that.

Q. What else did you say?

A. Oh, I would have to have my memory refreshed on the conversation.

Q. You can't recall any more of the conversation?

A. No.

Q. Did you tell him that you were going to see Mr. Crisp?

A. I don't think I did. I don't know whether I did or not.

1692 Q. You have no recollection of telling him whom you were going to consult?

A. No.

Q. Was it Mr. Crisp or you who made the suggestion of bankruptcy proceedings?

A. I think it was probably Mr. Crisp. I told him the state of affairs and my condition of health, which he knew, and I left the matter for him to determine the proper way to proceed.

Q. Was Mr. Williams down there too?

A. No.

Q. You went there yourself?

A. Yes.

Q. No one else?

1693

A. No.

Q. And you are quite sure that the suggestion of bankruptcy proceedings came from Mr. Crisp?

A. Well, I don't think that there is any doubt of that. I hadn't any clearly defined idea as to how to proceed although I favored calling a meeting of the creditors and letting them determine what was the best thing to do under the circumstances.

Q. Had any of the creditors suggested the filing of a petition in bankruptcy outside of Mr. Crisp, who was a creditor?

A. No.

1694

Q. Now, Mr. Kepner, you have already testified that your business consisted of converting goods from the gray and also in selling goods in the gray when you could with a profit—was there any particular time of the year when you placed your contracts with the mills for gray goods?

A. No.

Q. And were these contracts made from time to time during the business year?

A. Yes.

Q. And would goods be held at the mills for the shipment to the bleacheries according to your order?

1695

A. Well, probably in a majority of cases they were shipped as soon as invoiced and in some cases they were held at the mills waiting for shipping directions.

Q. Were not the goods sometimes ordered for future delivery?

A. Oh, yes.

Q. And how long would orders for future delivery be given in advance of delivery?

A. I don't think we ever bought any goods for delivery further ahead than twelve or fourteen

1636 months, although in some instances our contracts were in actual delivery over two years later than the time of purchase.

Q. What was the average time of delivery after the orders were given in the general run of your business?

A. That depended entirely, Mr. Cohen, upon business conditions. If I thought the market was low and likely to advance I bought as far ahead as the mills would sell. Of course that was not the condition recently and hasn't been since January, 1910.

Q. What was the average period between pur-
1637 chase and delivery of goods during 1910?

A. You mean all our purchases during the year 1910? Well, comparatively near-by delivery.

Q. What do you mean by near-by delivery?

A. Well, delivery ranging from immediately to commencing within sixty days and extending over a period of five to ten weeks.

Q. Is it true to say that almost every day goods were coming from the mills?

A. Yes.

Q. And going to the bleacheries?

A. Yes.

Q. And goods were being shipped out of the
1638 bleacheries to the customers?

A. Yes.

Q. And these goods were coming in from the mills pursuant to the orders which you had previously given for the goods?

A. Yes.

Q. Now, you referred in your direct testimony to the refusal by the bleacheries to ship goods; did you ever get any letters containing the words "Refuse to ship goods?"

A. Well, I can't recall the exact wording of the letters but we frequently got letters stating that

the condition of our account would not permit them to ship. 1680

Q. You knew that without their writing the letters?

A. Yes.

Q. That is, you followed the condition of the bleachery just as you followed the condition of Mr. Beckendorf's account and your maturing obligations?

A. Yes.

Q. And you knew that if goods pursuant to orders which were given to the mills did not reach the bleacheries or the loan of the bank was not reduced sufficiently the goods which were ordered 1700
by the customers couldn't be shipped by the bleacheries?

A. From the bleacheries, yes.

Q. That was the regular condition?

A. Yes.

Q. And the usual condition during the entire year 1910?

A. I think that is so.

Q. In other words the machinery of your business was so adjusted that as long as goods were sold to customers at a profit you could borrow money on your accounts receivable, liquidate your obligations, get new goods in to fill your orders as 1701
they came in and the goods would be shipped from the bleacheries in the usual course, isn't that the situation?

A. Yes.

Q. But the machinery was so delicately adjusted that if at any time Mr. Beckendorf refused to continue to advance money to you on these accounts receivable there was danger that the whole machinery would stop?

A. Yes.

Q. You knew that?

A. Yes.

1702 Q. And you knew it all through 1910?

A. Well, probably. Of course as our condition expanded it got worse.

Q. And you knew that as your condition expanded you had to increase your borrowings with Mr. Dockendorf, isn't that so?

A. Well, we had to increase our borrowings from somewhere.

Q. And Mr. Dockendorf was the only place you had?

A. The only place we did anyway. It was the only available place we had, yes.

Recess Taken.

1703

1704

After Recess 1705

JOHN B. KEPNER, examination resumed.

By Mr. Cohen:

Q. Mr. Kepner, you were asked the question by Mr. Wolf at pages 537-538 with reference to conversations with Mr. Dockendorf relating to additional collateral and you stated at about that time it developed that quite a large amount of credits that should have been passed to customers were not passed and you discovered at that time the amount of those credits. You said "That of course vitiated some of the accounts which Mr. Dockendorf held as security and after crediting these accounts it made 1706
our loan with Mr. Dockendorf larger than was warranted by the good collateral. Mr. Dockendorf called on me to ascertain whether there was anything else we could give him as security for these overdrafts. At that time we gave him a second lien on the merchandise at the bleacheries and I gave Mr. Dockendorf some personal property I had as security for the loan." When you were examined under 21A, Mr. Kepner, you were asked with reference to the contracts as to the bleacheries, the second lien on the goods at the bleacheries at pages and Mr. Wolf said, "I want you to tell us every-
thing you can remember as the reason for entering 1707
into this new contract," and the answer which you then gave was, "The reason for entering into this new contract at that time was that Mr. Dockendorf's loan was very large, at a very large interest and his intention was to lend us money on other securities than those which he had before and he thought he should have a larger commission for it. I think that is all there was of any importance that I can remember." Now, how do you reconcile those two statements?

A. I don't know what you mean. I don't see, as

1708 yet, anything irreconcilable in the two statements.

Q. What were the other securities that Mr. Dockendorf was to lend you money on?

A. Of course, I can't answer that question without knowing the context.

Q. If you want to read it I have no objection to your doing so.

A. Mr. Wolf asked me why we entered into this new agreement in May and you read it was because Mr. Dockendorf's loan was very large at a large interest. I really think the record is incorrect there, I never made that statement.

Q. I am not concerned about that part. I am
1709 asking about this other part.

A. His intention was to lend us money on other securities than he had before and he thought he should have a larger commission for it?

Q. Yes. What were the other securities is the question I am now asking.

A. Well, I probably referred to loans on the merchandise at the bleacheries. I considered that was security. And also I may have referred to the fact that Mr. Dockendorf agreed to carry what we called an overdraft.

Q. You haven't answered the question yet. I asked what did you mean there when you referred
1710 to loans on other security, what did you mean by other securities?

A. Well, the only change in our relations, in the working out of our agreement was that Mr. Dockendorf was willing to accept an assignment of our equity in the bleachery goods as the basis of security for loans which he advanced and I think that was used as an offset.

Q. Was that the other securities to which you referred when you were examined under 21A?

A. Yes. I don't recall my answer. I can't think of any other securities that I could have referred to.

Q. And when you testified here in your examination before the Referee in answer to Mr. Wolf's question that you gave Mr. Dockendorf a second lien on the merchandise at the bleacheries to cover the accounts for which you had not passed credits— 1711

A. Is that what I said? That was in effect what it was. Mr. Dockendorf's collateral was affected by those credits which should have been put through and as far as I can recall it was at that time that Mr. Dockendorf requested additional security. I may be mistaken in the time, but I think that is it.

Q. If that were the situation then why did you testify before Mr. DeCoster under 21A that the purpose of that additional security was because Mr. Dockendorf was going to lend you money on other kinds of security? 1712

A. I don't think I understand. You said the purpose of the security.

Q. The purpose of giving the security was that he was going to lend you money.

A. I didn't state that. It says the reason for entering into that agreement.

Q. Yes.

A. That is reconcilable.

Q. Is that true?

A. Yes.

Q. The reason for entering into that agreement was that he was going to lend you money on other security and that was the equity in the bleachery goods? 1713

A. Yes. I don't say that we had not already made an assignment of our equity in the bleachery merchandise, that was incorporated—I don't know whether it was incorporated in the new agreement or not.

Q. How could Mr. Dockendorf lend you money on the equity in the bleachery goods as additional

1714 security, on that security, unless he got an assignment of the equity in the bleacheries?

A. You say how could he?

Q. Yes.

A. I don't know why he couldn't. I don't fully get the question.

Q. Isn't it the fact that you couldn't get money from Mr. Dockendorf on the equity in the bleacheries until you gave him an assignment of the equity in the bleacheries?

A. That assignment, Mr. Cohen, was made at one time and as I understand it was a running agreement to cover equities as they might appear
1715 in the future.

Q. And wasn't it made for the purpose of enabling you to get money on the goods that were at the bleacheries from Mr. Dockendorf?

A. I think that is quite so, yes.

Q. What are you doing now, Mr. Kepner?

A. I am engaged in selling the goods that were pledged to the Bank of North America as their agent.

Q. Who is employing you?

A. The Bank of North America.

Q. Have you made any arrangements to go into business again?

1716 A. No.

Q. Some of the general creditors are personal friends of yours, are they not?

A. Well, I haven't seen but two of them since the receivership. I hope that some of them are.

Q. They were before the bankruptcy?

A. I think I could consider them as such, yes.

Q. You know, of course, that your ability to rehabilitate yourself in business depends upon the impression that you create upon their minds?

A. Well, do you want me to answer that?

Q. Yes.

A. Undoubtedly if I create an unfavorable im-

pression on their minds they would not care to 1717
do business with me in the future, probably.

Q. Have you had that in mind when you have been testifying here, you have, haven't you?

A. No, I haven't given it any consideration at all.

Q. Do you know how counsel who examined you before happened to know about this conversation with Mr. Dockendorf regarding the statement of the position of Mr. Mitchnor of the Bank of North America concerning which you have testified at page 563?

A. I don't recall what you mean. Do I know how the counsel who questioned me happened 1718
to know about a conversation with whom?

Q. The testimony elicited from you at pages 562 and 563. I can call your attention to it more briefly than you can read it. You remember you were asked about a conversation with Mr. Dockendorf respecting the deposit of checks from Mr. Dockendorf in the Bank of North America?

A. Yes.

Q. And you remember that you testified that you preferred not to deposit those checks in the Bank of North America inasmuch as you had never notified them that you assigned your accounts and you knew that Mr. Mitchnor of the 1719
Bank of North America did not approve of that method of doing business?

A. Yes.

Q. Do you happen to know how Mr. Rosenberg knew about that before you were examined?

A. No. I don't know that he did not know anything about that. I don't think that he did.

Q. Did you have any conference with him before you were examined?

A. Yes.

1720 Q. With Mr. Wolf?

A. No, I don't think I ever had any with Mr. Wolf.

Q. Who took you there to see Mr. Rosenberg?

A. I went at the invitation of Mr. Borden.

Q. Who is he?

A. One of our largest creditors.

Q. Have a conversation with him before you went there?

A. Yes.

Q. How did you come to go to Mr. Borden?

A. He came to me.

Q. Where were you then?

1721 A. At the same place I am now, 366 Broadway.

Q. What is the name of Mr. Borden's concern?

A. The Parker-Hargraves.

Q. One of the largest creditors?

A. Yes.

Q. How large is their claim, approximately?

A. The two accounts together probably aggregate $50,000.

Q. Did he tell you you had gotten in pretty bad in this situation? You can answer that yes or no.

A. No, he never made any remark like that.

Q. Did he, in substance, tell you that your

1722 situation was pretty precarious?

A. No, we had already made our arrangements This was after the trouble.

Q. I mean after the trouble. Did he indicate to you what the frame of mind of the general creditors toward you was?

A. The general creditors?

Q. Yes, the unsecured creditors?

A. No, he didn't. His attitude seemed to be friendly.

Q. Friendly to you?

A. Yes.

Q. Did he ask you to go and see Mr. Rosen- 1723
berg?

A. Yes, he asked me if I would consent to go and I said I would.

Q. Was anyone else present when you saw Mr. Rosenberg?

A. No.

Q. Did you give any information to Mr. Rosenberg or did he just ask you questions?

A. Mr. Rosenberg said that he wasn't familiar with the facts in the case and would like to go over them with me and ascertain if he could the entire facts of the matter.

Q. Did you tell Mr. Rosenberg that you and 1724
Mr. Dockendorf had entered into a conspiracy to defraud the general creditors?

A. No, I certainly did not.

Q. Anything to that effect?

A. No.

Q. Did you tell Mr. Rosenberg that you had deliberately gone out to buy goods for the purpose of meeting the accounts receivable which you had transferred to Mr. Dockendorf?

A. No.

Q. Did you tell Mr. Rosenberg that you had concealed the fact that you were borrowing money on your accounts receivable when securing credit 1725
from the general unsecured creditors?

Mr. Wolf: I object to the word conceal as giving an improper inference.

Objection withdrawn.

A. I did not, sir.

Q. Either in substance or in that language?

A. No.

Q. Did you tell Mr. Rosenberg anything about this conversation with Mr. Dockendorf regarding the Bank of North America?

A. I don't think that matter was discussed.

1726 Q. How did it happen that when you were examined as to times, Mr. Kepner, on your direct examination that you referred to the period of four months? Did you know that that was the period during which preferences were prohibited by the bankruptcy law?

A. I was familiar with that. I had no reference to that, however.

Q. You knew that that was the preferential period?

A. I have heard that, yes. I have just thought of an error in my testimony, which, I presume, I will have to correct. You asked if I ever had
1727 any conference with Mr. Wolf and also whether anyone else was present at this interview with Mr. Rosenberg. I recall that I saw Mr. Rosenberg twice and at one of those times Mr. Wolf was there.

Q. How long did these conferences last?

A. They weren't very long. They were on two occasions, I think two successive days, probably an hour each day.

Q. Now, to be perfectly frank, Mr. Kepner, didn't you in your conversation with Mr. Borden and with Mr. Rosenberg hope to ingratiate yourself with the general unsecured creditors so that if
1728 you ever started in business again you would have their good will?

A. As to attempting to ingratiate myself with any general creditors, Mr. Cohen, but if you mean to insinuate that I would do anything not exactly true or honorable you are entirely mistaken.

Q. You don't think that that mental attitude affected your testimony on the direct examination at all?

A. Not the slightest bit.

Q. You didn't agree to go to see Mr. Dockendorf's counsel at any time, did you?

A. I not only agreed to but I did. 1729

Q. I mean since the bankruptcy proceedings were begun.

A. Yes.

Q. When was that?

A. Oh, I saw them on more than one occasion.

Q. Was that not always at the office of your attorney, Mr. Crisp?

A. No, at Mr. Dockendorf's office in some cases.

Q. Now, you testified on your cross examination that Mr. Dockendorf expressed the wish to you that you should change your banker or substitute someone in his place?

A. I remember it was mentioned. 1730

Q. When was that?

A. I can't recall the time when that occurred. I think probably I approximated it before but I think I can cover it by saying that it was sometime between May and November.

Q. Wasn't it several times?

A. Yes, I think that he expressed the wish that we would change our banker several times.

Q. Would you say it was repeatedly?

A. Well, I presume I may say he probably said it four or five times.

Q. There never was any doubt in your mind, was there Mr. Kepner, during the past six months of your business dealings with Mr. Dockendorf that if he could have stopped lending you money without injuring your business that he would have done so? 1731

Mr. Wolf: I object, incompetent and immaterial and irrelevant unless Mr. Kepner can qualify as a mind reader.

Question reframed.

Q. From what Mr. Dockendorf said to you was there ever any doubt in your mind during the past six months of your dealings with Mr. Dockendorf

1732 that except for the fact that stopping advancing money to you on accounts receivable would inevitably break the business, Mr. Dockendorf would have felt very much relieved to have stopped advancing any more money?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant and calling for the witness' conclusion as to what was going on in Mr. Dockendorf's mind.

Overruled.

Q. You can answer that yes or no, can't you?

A. No, I can't. I think it is a difficult question

1733 to answer because if I understood the question correctly

Q. Let me break it up for you. You knew very well from what Mr. Dockendorf said to you that he wished you would take your account somewhere else?

A. Yes.

Q. You knew very well that you couldn't take your account somewhere else?

A. Yes.

Q. You knew very well and he knew very well that the moment he stopped lending you the money on your accounts receivable that moment the seri-

1734 ous crisis would come?

A. Yes.

Q. And did you not in fact plead with him to continue with you although he requested that you take the account somewhere else, did you say to him from time to time, "You know Mr. Dockendorf if you stop lending me money on my accounts receivable it is all over," or words to that effect?

A. I don't recall making any such statement as that, Mr. Cohen, I just simply don't recall it, that's all. I might have mentioned it, but it was obvious.

Q. And it was so obvious that it was recognized

by you and Mr. Dockendorf in your conduct with 1735
each other?

A. I guess that is undoubtedly so.

Redirect examination by Mr. Wolf:

Q. You say that you knew and Mr. Dockendorf knew very well that you could not take your account elsewhere, why not?

A. Well, perhaps that question—I hadn't made any determined effort to take it anywhere else. Other brokers for business such as Mr. Dockendorf's had solicited our account and when I said that we could not I meant not that it was impossible but that we hadn't been able to make any such 1736
arrangement, I hadn't made any determined effort.

Q. And is that what you meant by saying in answer to Mr. Cohen's question that you and Mr. Dockendorf knew very well that you could not take the account elsewhere?

A. That is what I meant, yes, sir.

Q. You testified in answer to a question by Mr. Cohen that you had a conversation with Mr. Borden and also two conversations with Mr. Rosenberg at one of which Mr. Wolf was present referring to the conversation which you had with Mr. Borden what did you say to him and what did he say to you?

1737

A. Mr. Borden said that the general creditors of which he was a representative, being chairman of the Committee of Creditors were—no I don't think he told me that, I think I was aware of the fact. What he wanted me to do was—

Q. What did he say to you?

A. He asked me if I would have any objection to seeing Mr. Rosenberg.

Q. What did you say?

A. I said certainly not.

Q. Was anything further said?

A. He said the reason he wanted me to see Mr

1738 Rosenberg was that he wanted him to talk the matter over more fully and more at length than could be done on the witness stand and his desire was to become acquainted with all the facts in our entire business. He wanted to know all he could about the business.

Q. And then you went down to Mr. Rosenberg's office?

A. Yes.

Q. Did he ask you what the relations were and the facts were concerning your firm and Mr. Dockendorf?

A. Did Mr. Rosenberg?

1739 Q. Yes.

A. I don't recall any question directly as to that.

Q. What did he ask you, that you should state the facts?

A. Yes. He asked me to state some facts as to various matters. I remember he asked me about — in the first place he asked me as to our solvency, questioned me very closely as to that and as to my knowledge of our insolvency and he also wanted an explanation of the transaction of the kiting of the checks and I don't know that I recall very much of the conversation.

1740 Q. Did he tell you that you were going to be called as a witness here?

A. Yes, I think he said that I would be.

Q. Did he tell you that you should do anything more or less —

Mr. Cohen: What did he tell you?

Q. What did he tell you about the testimony that you were to give?

A. He didn't mention it as I remember.

Q. Did you know who the Shree petitioning

creditors were that filed the petition in bankruptcy against you? 1741

A. I don't know that I do unless I heard the names. I know that Mr. Crisp's account was one of the creditors.

Q. Mr. Victor was one of the petitioning creditors was he not?

A. I didn't think that he was, but he may have been.

Q. He was an employee of the Schwab-Kepner Company, wasn't he?

A. He was Vice-President. I suppose it had the effect of an employee.

Q. Harold V. Story was another; do you know him? 1742

A. No, I don't.

Q. Was he the assignee of the claim of Mr. Crisp against the corporation?

A. He might have been.

Q. Do you know the third petitioning creditor, Wheeler G. Phillips?

A. Yes.

Q. What business is he in?

A. Broker.

Q. Employed by the Schwab-Kepner Company?

A. No, a broker of cotton goods, that was on commission for the sale of goods. 1743

Q. Prior to the filing of the petition in bankruptcy who was the attorney for the Schwab-Kepner Company?

A. Well, I always considered my personal attorney W. B. Crisp. We, however, employed various attorneys on various matters.

Q. Hadn't W. B. Crisp attended to legal matters for the corporation?

A. He had, but not entirely.

Q. He had done most of the legal work of the corporation prior to the receivership?

A. I don't—we hadn't much legal work. I doubt

1744 if you could place him in that way, most of our legal work was in regard to collections and he hadn't anything to do with that. He defended us in an action brought by a mill.

Q. Wasn't that action for a large sum of money?

A. Yes.

Q. Isn't it the fact that any important legal work prior to the receivership was attended to by Mr. Crisp?

A. Undoubtedly, if there had been any important legal work I would have taken it to Mr. Crisp.

Q. By Mr. Crisp you mean W. B.?

A. Yes.

1745 Q. Do you know the name of the attorney who appeared as attorney of record for the petitioning creditors?

A. The attorney of record for the petitioning creditors?

Q. Yes. Wasn't it David Carrol?

A. I think so.

Q. Do you know where his office is?

A. I don't mean to say that he was the attorney but I think it is probable.

Q. Do you know where his office is?

A. In Mr. W. B. Crisp's suite.

Q. Who were appointed Receivers?

1746 A. Mr. Crisp's son and Atwater.

Q. What is Mr. Crisp's son's name?

A. Theodore M.

Q. Subsequent to the filing of the receivership who appeared as attorney of record for the Schwab Kepner Company, bankrupt?

A. I really can't answer.

Q. Don't you know that Mr. Randall did?

A. I don't know that he did; as attorney for the bankrupt?

Q. Yes.

A. I asked Mr. Crisp if I shouldn't be represented

and he said he didn't think so, but if I would like 1747
to he would ask Mr. Randall to go. I don't know that he was attorney of record for the bankrupt.

Q. Do you not recall that when you were examined by Mr. Wolf the first time under 21A that Mr. Randall appeared as attorney of record for the bankrupt?

A. I don't recall that he did, Mr. Wolf, no. I remember some talk being had between Mr. Crisp and Mr. Randall as to an appearance.

It is stipulated that the record shows that Robert F. Randall appeared as counsel for the bankrupt at the examination of witnesses held January 5th in the bankruptcy 1748
proceedings under 21 A.

Q. What relation does Mr. Randall bear to the firm of Crisp, Randall & Crisp?

A. He is a member of that firm.

Q. You have testified in answer to Mr. Cohen's question that you saw Mr. Crisp on the Monday preceding the filing of the petition in bankruptcy?

A. I think that is so.

Q. Was that the first time that you had spoken to Mr. Crisp about filing a petition in bankruptcy?

A. Yes.

Q. Or about legal proceedings looking to a wind- 1749
ing up of the corporation?

A. The first interview of any kind.

Q. Prior to seeing Mr. Crisp I think you testified that you had a conversation with Mr. Dockendorf?

A. Yes.

Q. Will you kindly let us have what was said to you by Mr. Dockendorf at that interview and what you said to him?

A. I am afraid some of it might not be fit for publication.

1750 Q. Well, let us have it.

A. Can't I ask for specific questions?

Master: Give it as near as you can remember, the whole conversation.

A. Well, Mr. Williams was present at that conversation and his memory is much better than mine. I know he could give a very much better account of the interview. I told Mr. Doekendorf that Mr. Williams had reported to me the danger of our had reported a probably insolvent condition of the business and told him that there was in my opinion that it was impossible for us to
1751 proceed. I know that Mr. Doekendorf was very much excited about the situation.

Mr. Cohen: Did he swear, Mr. Kepner?

A. Of course I hate to say it but I am afraid that he did.

Q. Did you have any talk with Mr. Doekendorf as to what was to be done?

A. I think that Mr. Doekendorf said that we, I think his remark was, "Well, you have got to see your creditors," as something that was necessary, something that was obvious. He didn't issue it as a desire or a command or anything of that
1752 kind but he came to that conclusion after my remarks.

Q. Did you see Mr. Doekendorf or his representative after you had spoken to Mr. Crisp?

A. I saw Mr. Doekendorf several times subsequent to that time.

Q. I mean prior to the filing of the petition in bankruptcy.

A. Well, that occurred—Mr. Doekendorf of course was the first one to know of our decision and he was in consultation with me at Mr. Crisp's office about that time, the actual filing of the petition, I don't know that I can answer as to just

when that was. You see it wasn't in my hands, 1753
I placed the matter in Mr. Crisp's hands and he pushed it through.

Q. At the time you saw Mr. Dockendorf on Monday before you went to Mr. Crisp's office did you tell Mr. Dockendorf that you were going to Mr. Crisp's office?

A. No.

Q. Then after you had gone to Mr. Crisp's office did you and Mr. Crisp or you alone see Mr. Dockendorf or his representative—did either you or Mr. Crisp see Mr. Dockendorf after you had gone to Mr. Crisp's office and before the filing of the petition in bankruptcy?

1754

A. I don't know whether that is so or not.

Q. What was the first talk you had with Mr. Dockendorf or any of his representatives after the talk on Monday morning?

A. Well, I saw Mr. Dockendorf frequently about that time. I don't recall when the first time was that I saw him. I can't think when it was or for what. I haven't any way of refreshing my memory.

Q. Were you told who was to be appointed Receivers before they were appointed?

A. No, I was not. Mr. Crisp asked me if I had any objection to Theodore acting as Receiver and I said certainly not.

1755

Q. Now, can you recall the first talk you had with Mr. Dockendorf after you saw Mr. Crisp on that Monday morning?

A. I didn't see Mr. Crisp in the morning.

Q. On Monday?

A. Can I recall the first interview?

Q. Yes.

A. No, I can't.

Q. Did you and Mr. Crisp ever see Mr. Dockendorf?

A. Yes.

1756 Q. When?

A. Well, several times.

Q. Tell us when the first conversation between you and Mr. Crisp and Mr. Dockendorf or his representative occurred?

A. Well, I would very much like to tell you since you are so anxious to know but I can't unless my memory is refreshed.

Q. Do you recall who was there?

A. At the first interview?

Q. Yes.

A. I can't recall the first interview. If I could recall who was there of course I could recall the
1757 first interview.

Q. Do you recall any interview had between you and Mr. Crisp and Mr. Dockendorf or his representative at which the question of Mr. Dockendorf's claim was discussed?

A. Yes.

Q. When did that conversation occur?

A. Oh, I think that occurred if I remember right at more than one interview during the time of the receivership. I think that it occurred very shortly after the appointment of the Receivers.

Q. Can you tell us what was said?

A. I don't know that I can recall the specific
1758 conversation except that I know the gist of the conversation was as to how Mr. Dockendorf's claim how Mr. Dockendorf would get hold of some money that he claimed was his. I think the conference was as to what steps it would be necessary to take.

Q. At any of these conversations was it suggested, or said rather that Mr. Crisp should act as the attorney for Mr. Dockendorf?

A. At any of these interviews?

Q. Yes.

A. No, I don't think that it was.

Q. Was that suggested at any time? 1759

Mr. Cohen: Suggested at any time by whom?

Mr. Wolf: By Mr. Dockendorf.

A. No.

Q. You have been asked, Mr. Kepner respecting the books of account of the Schwab-Kepner Company, can you tell whether with the exception of the proper passing of credits the books were kept properly?

A. Yes, I think you will find the books very clearly and properly kept. Even the matter of the passing of credits was merely a deferred action. 1760
The original credits were discovered and in our system of bookkeeping would eventually have been discovered.

Q. Simply that the time of the passing of the credits was delayed?

A. Yes.

Q. Were all the transactions in the books entered at the time they occurred?

A. Everything was entered at the time that occurred, undoubtedly. This matter of delay in credits was instituted by me as a safeguard. A great many of our customers were, we considered, rather risky morally and in some instances credits were 1761
issued to customers where they should not have been and my rule was that no credit was to be issued to anyone unless we had actual proof of the correctness of the credit. If it was a matter of returned merchandise we had to have the merchandise actually in our possession before the credit was entered.

Q. Generally speaking you can say that the books of your company were correctly kept?

Mr. Cohen: Objected to, leading, not

1762 brought out by any question on cross examination.

Mr. Cohen: Did you keep the books yourself, Mr. Kepner?

A. No.

Objection sustained.

Q. You testified, Mr. Kepner, in answer to Mr. Cohen's questions that the gray goods were billed to Tatum and other brokers for sale, is that so?

A. Well, that is correct as far as it goes, yes. Not in every instance, in certain instances that was done.

1763 Q. And the sale was made in the manner that you have testified?

A. Yes.

Q. How long had that practice been in vogue in the company?

A. Well, that was quite an old practice.

Q. How long, a year?

A. I think probably a year and longer.

Q. And against the so-called accounts thus created Mr. Dockendorff advanced moneys, is that correct?

A. Those accounts were assigned to Mr. Dockendorf in our regular schedules of assignments and

1764 Mr. Dockendorf advanced moneys, undoubtedly they were considered in the collateral.

Q. Did you have any conversation with Mr. Dockendorf at any time respecting that method of doing business?

A. Yes.

Q. When?

A. Oh, that was mentioned on several occasions.

Q. Can you fix any specific occasion?

A. No, I don't think that I can.

Q. Can you mention any time when it was dis-

cussed as compared with the time when this method of doing business was first started? 1765

A. Oh, no. I can say that it was not discussed prior to the time that Mr. Dockendorf had his representative there.

Q. Prior to the time that Mr. Hardy came?

A. Yes. That is, I am quite confident that that was so.

Q. So that all the conversations you had with Mr. Dockendorf respecting that method of doing business were subsequent to Mr. Hardy's advent into the business?

A. Yes.

Q. Can you recall what was said at the first interview you had with Mr. Dockendorf respecting that method of doing business? 1766

A. If I recollect correctly it was first brought to Mr. Dockendorf's attention by a large amount of credits or by some one large credit or something of that kind which we put through, we having decided to take back the goods and sell them to someone else as we had a good offer for the goods.

Q. Can you fix the time, whether it was when Mr. Hardy was there or when Mr. Williams was there.

A. I think it was during Mr. Williams' time.

Q. Was it during the first part of his administration—can you fix the month in which the occurrence occurred? 1767

A. No, I really can't.

Q. Can you tell us the conversation that you had with Mr. Dockendorf on that subject?

A. Mr. Dockendorf did not like that kind of collateral, he said that there were too many loopholes for the customer to get out of and he expressed himself as strongly not in favor of it and wanted me to do as little of it as possible.

Q. What was said at this interview or at any

subsequent interview respecting the continuance of such a method of business?

A. I explained to Mr. Dockendorf that it was not always possible for us to negotiate sales of finished goods and consummate them at the exact time at which we required money. Of course, he was continually hounding me to anticipate our wants by getting the business in shape so that we would be able to have our collateral all down there in time to permit him to give us money in time to meet our requests and for that reason it was very often necessary for me to resort to this sale of gray goods which is easily disposed of any day just as you can sell any other commodity quoted at a fixed market value and the most economical way for us to dispose of the goods and that was to sell them to someone who was able to convert them and sell them as the demand was created.

Q. Now, what conversation did you have with Mr. Dockendorf on that subject of the continuation of that method of doing business? You haven't told us.

A. I said that was my conversation with Mr. Dockendorf, at least I intended to say that.

Q. What did Mr. Dockendorf say in answer to that?

A. I don't know that I can give you his specific replies except as I stated before that he did not approve of that kind of business and he didn't want much of it. I think, as I said before, if our account on that kind Mr. Dockendorf had an idea as to the concerns with whom we did that kind of business and if our sales to that kind of people had been a large percentage of our business or happened to be at any specific time a large percentage he would question me about it.

Q. You have said that Mr. Dockendorf had an

idea of the concerns with whom you did that kind of business, how did he have that information? 1771

A. I think it came out of our interviews.

Q. You mean you told it to him?

A. Yes.

Q. You said that you said to Mr. Dockendorf that that was necessary in order for you to raise the money to meet your obligations as they matured and that Mr. Dockendorf said that he didn't favor that method of doing business, what was said with reference to reconciling your statement and Mr. Dockendorf's statement, your respective positions?

Mr. Cohen: I don't think that question fairly summarizes the testimony. 1772

Question withdrawn.

Q. What was said, if anything, between you and Mr. Dockendorf respecting your respective positions on the subject of selling in the way that you have just testified?

A. What I wish to convey is the fact that Mr. Dockendorf thought that this was not as desirable as some other methods of doing business that we had in the sale of the goods and he objected on that ground although he acquiesced in the continuance of it to a certain extent.

The Master: What was said about the continuance of it? 1773

Mr. Cohen: I move to strike out the portion of the answer which states that he acquiesced.

Motion allowed.

Q. State what Mr. Dockendorf said on that subject not what your supposition was.

A. Just what Mr. Dockendorf said?

Q. The substance of it, not his precise words.

A. I think these matters were discussed when Mr.

1774 Williams was present and I think that possibly he could throw some light on it.

The Master: We want your recollection of it now.

A. I tried to give the matter as fully as I could.

Q. You haven't said what Mr. Dockendorf said, or that he said what you have just testified to.

A. Mr. Dockendorf did not decline to advance money on further sales of that kind and that is why I said that he acquiesced in it.

Mr. Cohen: I move to strike out.

Motion allowed.

1775 The Master: The question is what he said. You ought to be able to tell us the substance of what he said.

A. It may seem strange that I cannot give just what he said but I cannot.

Q. Give us the substance of what he said?

A. The substance of what he said was, as I said before, that he wanted as little of that business as possible.

Q. When did this conversation take place? You haven't fixed the time.

A. No, I don't know that I can, except that I
1776 think it took place during Mr. Williams' administration.

Q. Can you state whether it took place during the month of July or August?

A. I think that it probably did. Mr. Williams came there in May, I think.

Q. He came there on the 5th of July.

A. Well, I was thinking it was before that time. I think it probably occurred early in Mr. Williams' time.

Q. This goods in the gray sold in this manner, can you tell where they were at the time that they

were billed to the different firms or other firms? 1777

A. Of course, they were either at the mills or at the bleacheries.

Q. Will you look at Exhibit P201 and Exhibit P202 appearing at pages 572 and 574 of the record; can you state from an examination of those two exhibits whether or not from January 1st, to September 1st, 1908, the unsecured indebtedness of the Schwab-Kepner Company increased or decreased?

A. Whether the unsecured indebtedness increased or decreased, I think that I can.

Q. Did it increase or decrease?

A. When I said I thought I could I thought there would be a larger difference in the figures but it is 1778
impossible to tell from these figures, because they are so similar, as to whether our unsecured indebtedness was to any great extent greater or less in one than the other.

Q. Will you look at Exhibit P201 and state whether from September 1st, 1908, to January 9th, 1909 the unsecured indebtedness increased?

A. There are so many things to be considered that it is rather difficult to tell what the exact condition was of the unsecured business. Our gross figures are in each instance larger at the later date.

Q. Now, can you tell by looking at Exhibit P205 1779
whether the unsecured indebtedness between January 9th, 1909, and October 1st, 1909, increased?

A. It is so very simple to tell from the itemized — if you take our trial balance as of these dates it is so simple to tell on those, here it is more or less conjecture.

Q. Will you please look at the trial balance sheets between now and the next session so as to be able to testify as to whether or not the unsecured indebtedness to creditors continued to increase down to the time of the receivership?

A. Yes, sir.

1780 Q. Mr. Kepner, you were asked by Mr. Cohen in his examination whether or not during certain periods of time the business in the aggregate was profitable; when, if at all, did it cease to be profitable?

A. I can only judge that by what I remember of business conditions and those conditions existed, unfavorable conditions existed from the first of the year or probably before the first of January, 1910, up to the time of the receivership.

Q. Did the business conditions from January 1st, 1910, up to the time of the receivership continue to grow better or worse?

1781 A. They continued to grow worse.

By the Master:

Q. Do you mean there was a poor market?

A. Yes, the high cost of things was agitated greatly, cotton was exceedingly high, higher than any other commodity in proportion and people thought that goods were high.

Q. You couldn't make sales?

A. They wouldn't buy ahead and it required more pushing on our part to get the business.

Q. You spoke some time ago of some heavy losses in the early part of 1910, not today but at another

1782 session.

A. I don't recall that.

Q. About a conversation with Mr. Dockendorf, you referred to the heavy losses and you thought if business improved as you thought it would you could recover; what was the occasion of the losses?

A. It was market conditions. The market continually declined, it has been the general tendency ever since January, 1910.

Q. You mean you had to sell below cost to you?

A. Yes.

Q. You had to take goods under contracts you had before? 1783

A. No, you see the strange part of our condition was that we had some very old contracts as I mentioned, some of these being two years old. Those contracts were brought prior to that time when the market was considerably lower, the market was very low during the panic, and it commenced to build up from there up to 1909 and close to January, and since that time it has been gradually going off and we had some contracts placed just shortly after, I think, some of which have never yet been delivered, and some of which are even yet under to-day's market price. We had no contracts coming in above the market price at the time, but if I bought goods for immediate delivery by the time I had them finished they could be replaced at a lower level. 1784

Sworn to before me this 1st day of March, 1911.

Adjourned to Friday, March 3rd, 1911, at 10:30 A. M.

1785

1786 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses before Edwin G. Adams, Referee in Bankruptcy, as Special
1787 Master, at No. 165 Broadway, New York City, on Friday, March 10th, 1911 at 10:30 A. M.

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF, Attorney for Receivers.

JOHN B. KEPNER, recalled:

Redirect examination by Mr. Wolf:

Q. Mr. Kepner, you were being examined at the last session concerning market conditions and you answered, "The market continually declined. It
1788 had been the general tendency ever since January, 1910." "Q. You mean you had to sell below cost to you?" "A. Yes." Do I understand you to testify that that condition began about January, 1910?

A. It is my opinion that it began some time prior to that but it has existed since then.

Q. The statement issued by your company to the agencies immediately preceding January 1st, 1910 showed that the company had made a profit for the preceding term, did it not?

A. Yes.

Q. So that—are you able to testify that the sales below cost occurred subsequent to the issuance of that statement? 1789

A. Well, I cannot testify that we did not sell anything below cost prior to that time.

Q. I mean the general aspect of the business?

A. The general aspect of the business was such from January 1st.

Q. You testified at page 644 that there were a number of accounts where the credits were not passed through but that those cases did not operate to increase the total amount of the overdue accounts, is that correct?

A. I don't think that is—it did not operate to increase the amount of overdues? 1790

Q. Yes.

A. Well, that might operate from Mr. Dockendorf's standpoint as if the accounts had matured and we had not passed through credits for them they would operate on Mr. Dockendorf's records as overdue accounts.

Q. You testified on page 646 and the succeeding pages that you did business on an overdraft which was possible by what is known as kiting checks and you also talked about a so-called bank overdraft. Did the practice of kiting checks and the bank overdraft refer to the same practice? 1791

A. Yes.

Q. When did the bank overdrafts begin?

A. I don't know that I can answer that. We had kited checks for quite a long period although not as generally as we did the last few months of our business.

Q. When did the general practice of kiting checks and the bank overdraft begin?

A. I think we had a practically continuous bank overdraft for six months.

Q. Preceding the receivership?

A. Preceding, yes.

1792 Q. What was the amount of the bank overdraft at the time of the receivership?

A. Well, at the time of the receivership we hadn't any bank overdraft.

Q. What was the highest point it ever reached?

A. I think about $50,000.

Q. When did it reach that point?

A. Well, it was just shortly before Thanksgiving.

Q. Just shortly prior to the receivership?

A. Yes, shortly prior.

Q. Now, why is it that at the time of the receivership which was only a few days subsequent
1793 to Thanksgiving Day there was no bank overdraft?

A. Why, we had about that time failed to make good our overdraft when checks were returned to the banks on which we had drawn them so that our overdraft collapsed, the banks discontinued honoring uncollected checks.

Q. Well, the hole in the process, how was that made good?

A. By increasing our loans so as to cover the overdraft and making good the loans by additional collateral.

Q. With what bank or banks did you increase loans, can you tell?

1794 A. Yes, I think I can tell.

Mr. Cohen: Are you referring now to the same period you talked of a few moments ago?

Mr. Wolf: Yes.

A. We increased our loan with the Bank of North America.

Q. To what extent?

A. I can't give the figures.

Q. Any other bank?

A. Yes, the Slater Trust Company.

Q. Any others?

1795

A. No, I think they were the only two.

Q. Those two institutions had merchandise at the bleacheries pledged as security for any indebtedness that might be due them, did they not?

A. They had merchandise pledged to them under an agreement.

Q. Then if I understand the process correctly the hole in the process of kiting checks was eliminated, made good by loans which these two banks placed to the credit of the Schwab-Kepner Company?

A. Yes.

Q. Did you testify that the increase of the so- 1796
called bank overdraft up to its maximum point around Thanksgiving Day was a gradual or a sudden increase?

A. Well, if you view it from a period of six months it was gradual.

Q. I mean in a period of six months?

A. Towards the end it increased much more rapidly than at the beginning.

Q. Did you ever have any conversation with Mr. Dockendorf respecting the bank overdrafts?

A. Yes, it was mentioned.

Q. When was the first one that you can recall?

A. I can't recall the first one. I can't recall any 1797
specific time.

Q. Can you recall whether or not you had a conversation with Mr. Dockendorf respecting the bank overdrafts at or about the time that the practice of having a bank overdraft became a regular condition?

A. No, I can't recall; I can't place the time or the circumstances of the conversation.

Q. Can you recall by months any specific conversation that you had with Mr. Dockendorf respecting bank overdrafts?

A. No, I can't.

1798 Q. You testified a few moments ago that the condition of bank overdrafts was a general one about six months preceding the receivership, is that correct?

A. I think it extended over a period of about that time.

Q. That would bring us down to about May, would it not?

A. Yes.

Q. Can you tell whether or not during the months of May, June and July you ever had any conversation with Mr. Dockendorf respecting the bank overdrafts?

1799 A. No, I can't fix the time at all, although I think that I had a conversation with Mr. Dockendorf or at least it was mentioned at an interview with Mr. Dockendorf during the time that Mr. Jones was there because I remember Jones calling it to my attention.

Q. At what time was that?

A. I can't recall the time. Some time between May and October.

Q. When did Mr. Jones leave?

A. I can't recall that although it wasn't very long prior to the receivership.

Q. Tell us the first conversation that you can
1800 remember with Mr. Dockendorf about bank overdrafts?

A. I can't recall.

Q. Can you recall any conversation with Mr. Dockendorf respecting bank overdrafts?

A. All that I can recall is that it had been mentioned in conversation with Mr. Dockendorf either by him or by me or by both of us.

Q. What did Mr. Dockendorf say about it?

A. It was never a matter of much of a feature that I can recall, Mr. Wolf. The conversation as I recall it was never of a very important kind.

Q. Did you ever discuss it with Mr. Williams? 1801

A. Well, yes. The bank overdraft was constantly before us, it had to be attended to very carefully.

Q. When is the first time that you recall having discussed it with Mr. Williams?

A. I don't recall the first time.

Q. Can you recall any conversation that you had with Mr. Williams on the subject of the bank overdrafts?

A. Oh, every day at the close of business we would look over the bank accounts and transfer checks to fill whatever gaps there were, and of course that was brought up every night.

Q. With Williams? 1802

A. Yes.

Q. And now, can you tell me anything which Mr. Williams said respecting the bank overdrafts?

A. Well, our conversation was generally relative to the best way to handle it as to what transfer to make and from what points.

Q. Did Mr. Williams ever say anything to you as to whether or not he approved or disapproved of the bank overdraft?

A. I don't recall his saying so, although it is my—although I know that he didn't.

Q. You know that he didn't what?

A. Approve of the method, although it was a matter of necessity at the time. 1803

Q. Did you ever have any conversation with Mr. Dockendorf in which he either approved or disapproved of the practice of having a so-called bank overdraft?

A. Well, I don't recall any criticism of Mr. Dockendorf, any exact criticism. I think he left that more or less to me.

Q. You have testified on page 658 that your intention in this process of kiting checks was to cut down the amount of inactive merchandise repre-

1804 sented by loans in banks and I was converting it as fast as I could into accounts which would liquidate themselves so that our condition it became necessary in accomplishing that to kite the checks and our condition was so extended that I couldn't do it in any other way." Is it not a fact that the process of kiting checks was resorted to in order to obtain a release of the goods from the bleacheries?

Mr. Cohen: Objected to, leading.
Objection sustained.

Q. Mr. Kepner, what was the purpose of the kit-
1805 ing of checks with respect to the releasing of goods from the bleacheries?

A. Well, there is no doubt in the world but what that was the purpose. I thought I had testified that there was only two ways of releasing goods from the bleacheries, either by shipping in merchandise or reducing the loan and it was advisable from our standpoint to reduce our loans as much as possible I preferred that method. As stated, I would send a check to the bank who had made the loan on the specific goods which we wished to release, reducing our loan, thus making it possible for them to ship the goods.

Q. And the goods when shipped created accounts
1806 receivable which were assigned to Dockendorf?

A. Yes.

Q. You testified at page 659 in answer to Mr. Cohen's question "Was it" that is Dockendorf's condition "becoming less secure?" you answered, "Well, I think that probably the reduction of the merchandise at the bleacheries, the condition of Mr. Dockendorf's second lien on the merchandise at the bleacheries, it tended to rather impair his condition that way." Is it not a fact that while his second lien on the merchandise at the bleacheries

may have been impaired, that his general condition 1807
remained unchanged because of the transfer of the accounts created by the sales of the merchandise released?

Mr. Cohen: Objected to, leading.
Objection sustained.

Q. What was the situation or condition of Mr. Dockendorf's account with respect to its becoming more or less secure by a release of the goods from the bleacheries?

A. I think if I explain my previous testimony in that case it might be well.

Q. All right, go ahead.

A. Of course the transfer of these goods into 1808
accounts which were assigned to Mr. Dockendorf did not impair his condition to that extent, but he had a second lien on our merchandise at the bleacheries and when the aggregate of that merchandise was reduced why the amount of our equity of course was proportionately reduced and the amount of collateral which Mr. Dockendorf held was reduced. The character of the collateral was better for Mr. Dockendorf to the extent that he would rather have accounts than a second lien on the merchandise. My testimony when I said that Mr. Dockendorf's condition was impaired referred to the fact of his second lien on the merchandise and that when the 1809
amount of that merchandise was reduced, why, of course, the amount of his security was reduced.

Q. Was the amount of assigned accounts which he had thus increased?

A. Yes.

Q. Mr. Kepner, you testified in answer to Mr. Cohen's question at page 662 that Mr. Dockendorf loaned you a sum of money on the day succeeding Thanksgiving Day. Do you remember who was

1810 present at the time that Mr. Dockendorf loaned you that money?

A. I think Mr. Williams was present.

Q. What did Mr. Dockendorf say to you and what did you say to him at that time?

A. It was the first interview we had, I think, after Mr. Dockendorf's return and of course in his absence the bleachery overdraft had materially increased owing to the falling down of the bank. That matter was broached to Mr. Dockendorf and I think he asked me if I thought that I could pull through. I have used that phrase as my own phrase. I don't know whether Mr. Dockendorf used that
1811 phrase or not but it was to that effect.

Q. Was anything else said?

A. I think that Mr. Dockendorf asked Mr. Williams to make a very explicit and complete analysis of affairs so that he could determine for himself, better determine as to our condition.

Q. Now, did Mr. Dockendorf say anything to you as to why he was making a loan of the money to the company which he then gave to you?

Mr. Cohen: Objected to, leading, the witness has not yet been exhausted as to his memory.

Question reframed.

1812

Q. What was said, Mr. Kepner, between you and Mr. Dockendorf respecting the loan which Mr. Dockendorf then made to the company?

A. I don't recall that exactly. Mr. Cohen in his cross examination I think it was, made a statement that Mr. Dockendorf made a remark when giving me the loan and that I didn't recall when he said it and I don't recall just exactly what Mr. Dockendorf did say. I don't recall the remark.

Q. Do you recall anything that Mr. Dockendorf

said, if he did say anything respecting the reason for his making that loan? 1813

A. I am sorry to delay you, but there was something said and I am trying to recall it. Of course the $7,500 if that was the amount, and I think it was, was given to me for the purpose of meeting our necessary obligations of that day, undoubtedly notes, I don't think we included the payment of any accounts in that amount, probably not. Mr. Dockendorf stated at that time before it became necessary to advance us any more money that he wanted Mr. Williams to make a complete report on the condition of the company and I think he said something about giving us an opportunity to find out by Williams getting right on the books, our exact condition and with a view to ascertaining whether it would be possible for him to advance any more money or not, whether our condition would warrant it or not. That is the gist of the conversation as I recall it. 1814

Q. Did Mr. Williams then start?

A. Yes.

Q. When was the next that you heard from either Mr. Williams or Mr. Dockendorf?

A. Of course Mr. Williams and I went back to the store, but I presume you refer to the telephone call on Sunday night.

Q. When you went back what did Mr. Williams proceed to do? 1815

A. Well, Mr. Williams wasn't right under my observation but it is my impression that he went right to work on the books to ascertain the condition.

Q. What was the next that you heard from Williams or Dockendorf?

A. The first I heard was from Mr. Williams on Sunday night. I think this conversation was probably on Friday.

1816 Q. How did you hear from him on Sunday night?

A. By telephone from our store.

Q. Where were you?

A. In Cranford.

Q. What did Mr. Williams say to you?

A. He asked me if I could come in as he had some figures that he wanted to show me, something to that effect. At any rate I gathered from his tone or manner that it was important that I come in and I came on the next train.

Q. What time did you get to the store?

A. About seven or eight o'clock at night.

1817 Q. Sunday?

A. Yes.

Q. What did Mr. Williams then say to you?

A. He hadn't completed his statement entirely but he—he had not balanced, he had probably completed his statement but it didn't balance. It showed a deficit at any rate. I don't think he had the exact figures out at that time, but he was firmly convinced that there was a deficit and imparted that to me. I was sick at the time and I think I came to the conclusion after our talk that the only thing we could do was to suspend.

Q. After that when did you next speak with

1818 Dockendorf?

A. Why, Mr. Williams and I went down to Mr. Dockendorf's office the following morning.

Q. Monday morning?

A. Yes.

Q. Who was present at that interview; you and Mr. Williams and Mr. Dockendorf—anyone else?

A. No. I don't know but what Mr. Dockendorf may have called in one of his clerks at one time or another.

Q. Now, will you tell us what was said between

you and Mr. Dockendorf and Mr. Williams at that interview? 1819

Mr. Cohen: Objected to, already covered. Overruled.

A. Well, Mr. Dockendorf was more or less pathetic at that interview

Mr. Cohen: I move to strike that out.

Mr. Wolf: The witness has not finished his answer.

A. (continued): There were matters mentioned at that interview which were indelibly impressed on my memory and I can't avoid it and while I have tried not to testify to it inasmuch as I didn't think it was necessary at this hearing, Mr. Dockendorf was anxious for me to continue and he mentioned the fact of just having given me $7,500, and I think he upbraided me for taking that $7,500, saying that I should not have taken it in our condition as it developed and he wanted to know whether I couldn't purchase more goods and whether it wouldn't be possible to stave off the calamity for a short time at least. I think I have given it all. 1820

Q. After Mr. Dockendorf asked you if you could not continue in business and buy more goods and stave off the calamity for at least a few days, what did you say and what did Mr. Williams say? 1821

A. I didn't say much at that interview and I don't believe Mr. Williams said very much. It was mostly Mr. Dockendorf.

Q. What did you say and what did Mr. Williams say on that subject, if anything, that you now recall?

A. I don't know. As I say, during my stay there I didn't have much to say and neither did Mr. Williams. Mr. Williams remained with Mr. Dock-

1822 endorf after I left for a short time and they probably had some interview but my intention at that time was to interview Mr. Crisp who was my attorney and I left Mr. Dockendorf's office and went to see Mr. Crisp.

Q. Had Mr. Williams or had you informed Mr. Dockendorf as to the result of Williams' examination of the books?

A. Had we informed Dockendorf?

Q. Yes.

Mr. Cohen: When do you mean?

Mr. Wolf: At this interview on Monday?

1823 A. Oh, yes. That was the cause of my position, the reason I went to see Mr. Dockendorf. I think possibly we had arranged this interview, I think we were probably to see Mr. Dockendorf on Monday morning, I am not sure as to that, however. At any rate that was the matter broached at the interview immediately.

Q. What did Williams say to Mr. Dockendorf was the result of his investigation and what did you say to him on that subject?

A. I told Mr. Dockendorf that as a result of Mr. Williams' investigation I found it was necessary for us to suspend and Mr. Dockendorf asked Williams for what papers he had in the matter and

1824 I remember that Mr. Williams was very taciturn and I was myself; I had very little to say and the interview didn't last very long, I think we got there about eleven o'clock and probably got away about twelve.

Q. Was it after or before you or Mr. Williams had reported the result of your examination that Mr. Dockendorf asked you if it wasn't possible for you to continue in business and buy more goods and avert the calamity for a short time at least?

A. I feel that I can't testify as to that.

By the Master:

1825

Q. Didn't you say that the first thing broached at the meeting was the result of the report?

A. I said as a result—

Q. You said that was the first thing spoken of?

A. Yes.

Q. You don't know now whether it was before or after that?

A. Mr. Wolf asked me if it was after Mr. Dockendorf had examined the papers—

By Mr. Wolf:

Q. No, that was not the question.

1826

Question read.

A. Yes, it was undoubtedly after that. I don't know where I got the idea that you asked about the report; I must have misunderstood.

Q. You were asked at the last session, Mr. Kepner, to ascertain whether or not in the years 1908-9-10 the indebtedness to unsecured creditors was gradually increasing or did increase, can you testify with respect to that at this time?

A. Well, I haven't been able to get at the books, Mr. Wolf. I have tried on several occasions and sometimes Mr. Williams wasn't on hand and he said that it would be necessary to work that up 1827
from our statements and I thought that I had copies of these statements in my personal papers down at Mr. Crisp's office, but I haven't been able to get at them and I have called him up two or three times and he has promised to get them out for me.

Mr. Cohen: You couldn't answer that without an examination of the books anyway, either by yourself or someone else?

A. I don't think that I could answer it suffi-

1828 ciently. I don't know that I can give an opinion here; I have an idea of the matter but it could be very easily ascertained from the books.

Q. How long would it take for you to ascertain the facts after examining the books?

Mr. Cohen: I object upon the ground that the books are the best evidence. We don't need the testimony of this witness.

Question withdrawn.

Q. Did you ever have any conversation with Mr. Dockendorf respecting the so-called overdrafts of your account with him?

1829 Mr. Cohen: Objected to on the ground that it was covered on the direct examination.

Overruled.

Question read.

A. Yes, our overdraft was mentioned frequently.

Q. Did you ever have any conversation with Mr. Dockendorf respecting the disposition of charge back accounts or charge backs?

A. I don't know that I fully understand the question.

Q. When accounts were not paid they were charged back, when they were not paid within a
1830 certain period of maturity?

A. Yes.

Q. And became so-called charge backs, is that correct?

A. Well, I don't recall that we referred to them by that phrase, but that is what they were in effect.

Q. What conversation did you have with Mr. Dockendorf respecting the charge backs?

A. I remember that I requested Mr. Dockendorf that we be allowed to re-assign these accounts, use them as a basis of loans.

Q. What did Mr. Dockendorf say? 1831

A. He would never do that.

Q. Can't you tell us what Mr. Dockendorf said to you on that subject?

A. On the subject of our using—re-assigning these accounts?

Q. Yes.

A. I could never get a good reason from him for not doing it. We broached it frequently and I contended that the accounts in that condition were better than they ever were.

Q. What was said respecting reassignments?

A. I requested that we re-assign these accounts to him either by making a new account of it by 1832
crediting the old charge and making a new charge under a new date of maturity. In a great many instances they resulted from our practice of not shipping goods on time owing to our overdrawn bleachery condition and when the accounts became due the customers sometimes refused to pay on the ground that the goods had not been shipped promptly so that in a great many cases these accounts, although they appeared overdue were good and were overdue through our fault, not through the fault of the customer, and I frequently asked Mr. Dockendorf that we use such accounts as new collateral.

Q. For the purpose of— 1833

A. For the purpose of making the loans.

Q. What did Mr. Dockendorf say?

A. He always declined to permit us to do so.

Q. Did he say why?

A. I never could get a good reason for it, no.

Q. You were asked by Mr. Cohen with respect to your obtaining another banker in place of Mr. Dockendorf, did you ever make any effort in that direction?

Mr. Cohen: Objected to, already covered. Objection withdrawn.

1834 A. No, I can't say that I ever made any effort in that direction.

Q. Why not?

A. As I think I testified we had some people who solicited our account. I had negotiations with one concern, that is to say, I went so far as getting their price but as to making any determined effort to make the change I didn't do it.

Q. Why not?

Mr. Cohen: I object, that calls for the operation of the witness's mind.

Master: I will allow the question subject to the objection.

1835

A. I think the main reason for it was that I hadn't the time.

Q. Was there any other reason?

A. Well, I had a notion that may have actuated —possibly this is operation of mind—I didn't think I could make any better arrangements with anyone else.

Q. You testified in answer to Mr. Cohen's question that most of the stormy conversations that you had with Mr. Dockendorf at least were about irregular bookkeeping methods; can you tell what period the so-called stormy conversations covered; 1836 when they began?

A. Oh, I think I would place May as approximately the time they began.

Q. When did they cease, if at all?

Mr. Cohen: I object, that assumes that stormy conversations were the general method of doing business between the parties.

Question withdrawn.

Q. When was the last stormy conversation that you recall?

A. I think probably the last interview we had was stormy.

Q. You mean the Monday? 1837

A. Yes.

Q. When was the last stormy conversation that you had about irregular bookkeeping methods?

A. I can't place any specific time.

Q. Did you have any stormy conversations with Mr. Dockendorf during the month of October, 1910?

Mr. Cohen: Concerning irregular bookkeeping?

Mr. Wolf: Concerning irregular bookkeeping?

A. I have no way of recalling that.

Q. Your testimony was that most of the stormy 1838
conversations at least were about irregular bookkeeping methods; on what other subjects did you have stormy conversations?

A. When we would ask for a loan without the collateral or if we hadn't sufficient collateral to put up with Mr. Dockendorf at the time our requiring and asking for a loan to meet pressing obligations. I recall that those interviews were sometimes unpleasant.

Mr. Cohen: You mean stormy?

Witness: I am sorry to have introduced that word stormy.

Q. Were there any other subjects that were the 1839
occasion of stormy interviews?

A. I don't recall anything else, Mr. Wolf. As I have testified we had stormy interviews at times and I don't know how that was brought out or why it was mentioned but without refreshing my memory I can't recall the reasons for them other than these.

Q. Is it, or is it not a fact, Mr. Kepner, that the goods at the bleacheries and the goods in warehouse, by reason of the shipment of goods and the

1840 bringing in of new goods, were constantly changing?

A. Yes, they were constantly changing. That doesn't of course apply to every item but that was the general tendency.

Q. You testified in answer to Mr. Cohen's question that Mr. Dockendorf objected to the sale of goods at times without bills of lading, do you recall that?

A. No, I don't think that I testified exactly that way.

Q. Do you recall what conversation you had with Mr. Dockendorf about shipment of goods with
1841 respect to the bills of lading?

A. Why, I recall that Mr. Dockendorf asked whether it would be possible for us to get him a bill of lading, yes.

Q. What does that mean?

A. Whether we could submit to him bills of lading with our collateral, with our accounts. In other words whether we could ship the goods before we assigned the accounts.

Q. Do you know the Valley Falls Mills?

A. Yes.

Q. Where are they located?

A. Albion, R. I.

1842 Q. Did you ever make to the Valley Falls Mills a statement of your financial condition?

A. Yes, I did.

Q. Is that the same statement that you gave to the agencies as of January, 1910?

A. Yes.

Q. Do you recall what the indebtedness was to the Valley Falls Mills of the Schwab-Kepner Company on the first of January, 1910?

Mr. Cohen: Objected to, not proper redirect examination, introduces a new topic

not brought out either on direct or cross. 1843

Overruled.

Question read.

A. No.

Q. Do you recall when you gave the Valley Falls Mills the statement of your financial condition as of January 1st, 1910?

A. No, I don't and I think probably I ought to amend my testimony as to the giving of that statement. I don't actually recall the giving of the statement to the Valley Falls Mills, the reason I said that we did was because Mr. Chase mentioned it to me not long ago, that we had given them a statement. I don't recall when we gave it to them. 1844

Recross examination by Mr. Cohen:

Q. Mr. Kepner, you just heard in the course of the argument something said about general fraud perpetrated by either you or Mr. Dockendorf; do you know of any fraud that you perpetrated upon any creditor?

Mr. Wolf: Objected to, incorporates the argument.

Objection sustained.

Q. Do you know of any fraudulent act that you committed in dealing with your general merchandise creditors? 1845

Mr. Wolf: Objected to, calls for a conclusion and operation of the witness's mind.

Objection sustained.

Q. Are you able to tell us to-day which of your accounts with the mills increased and which decreased after the first of January?

A. I think I would have an idea, Mr. Cohen, in a general way.

1846 Q. But the books would show accurately, would they not?

A. The books would, of course, show accurately.

Q. You were asked by Mr. Wolf with regard to stormy meetings at which irregular bookkeeping methods were discussed, when in point of time did the irregular bookkeeping stop?

A. After Mr. Dockendorf's representative had charge of the bookkeeping department, after May. After Mr. Hardy arrived there. I think probably that would answer the question.

Q. So far as you know, after Mr. Hardy came there and got things in shape the irregular book-
1847 keeping stopped.

A. I think undoubtedly.

Q. So that there were no stormy conversations on that subject after that time?

A. I think the old matters were referred to after that time.

Q. By way of criticism of you?

A. Yes, I think so.

Q. And the other subject of stormy conversation was when you were trying to get money beyond the equity in your collateral?

A. Yes.

Q. And Mr. Dockendorf was heated at times in
1848 regard to that?

A. Yes.

Mr. Wolf: I said a moment ago that I rested with Mr. Kepner. It may be that we will want to recall him with respect to some of the accounting questions, probably with respect to the matter I asked him to investigate, if I can't get that from some other witness.

Mr. Cohen: I assume that Mr. Wolf has a right to recall a witness on a new subject at any time.

Q. Now, you knew that the contracts that you entered into with Mr. Dockendorf originally were in writing? 1849

A. Yes.

Q. And there were subsequently written modifications, were there?

A. If I recall correctly our first contract ran its entire length without any modifications.

Q. When did that expire?

A. I don't recall the time. I am trying to get the idea of your question.

Q. I think we have in evidence all the written modifications of your contracts. Just give your best recollection of what modifications in the original contract were made? 1850

Mr. Wolf: I object to that the writings are in evidence and are the best evidence.

Mr. Cohen: I am trying to ascertain whether there are any other modifications than those in evidence.

Q. After the old contract had expired a new contract was entered into and that was the contract under which you did business down to the time of the bankruptcy proceeding, was it not?

A. I think we had three sets of contracts. I think we made a new contract about May.

Q. A new contract was made each May, was it not? 1851

A. There were copies of all of them.

Q. I show you Exhibit P1 of December 13th, 1910 and ask you whether you know of any changes or modifications that were made subsequent to that in the contract under which you were doing business with Mr. Dockendorf?

A. I think that simultaneously with this there was another agreement, supplemental agreement.

Q. That was relating to compensation?

A. Yes, sir.

1852 Q. Outside of those two contracts, taking those two contracts together, do you know of any changes or modifications under which you did business with Mr. Dockendorf?

The Master: You mean changes or modifications made?

Mr. Cohen: Yes, sir.

A. I remember signing some letters that were, I think, made a matter of agreement. I think they related to the manner of conducting the business, but I remember there was some other in the form of a letter.

1853 Q. You mean the long letter as to how the business should be conducted?

A. I think so, yes. I think it related to the method of conducting the business, that is, the routine.

Q. The routine work?

A. I think so, yes.

Q. But outside of those things you know of nothing else?

A. No.

Q. And no change or modification of the terms of your dealings with Mr. Dockendorf?

A. No.

Q. You testified in answer to Mr. Wolf's question to the effect that Mr. Dockendorf endeavored to 1854 get your borrowings on a bill of lading basis, is that right?

A. Yes.

Q. And that is that the bill of lading should accompany the certificates you sent to Mr. Dockendorf?

A. Yes.

Q. And he asked you to do that more than once?

A. Yes, that matter was spoken of.

Q. Would you say that it was repeatedly asked?

A. Well, I could say that the matter of getting

onto a bill of lading basis was repeatedly spoken of and Mr. Dockendorf tried to get me to set a date when I thought that I could get on that basis. Of course that was difficult to say but I think we figured out approximately when we thought we could. 1855

Q. Now, you stated in answer to Mr. Wolf's question that in a great many instances the overdue accounts resulted from our, meaning the Schwab-Kepner Company "not shipping the goods on time. When the accounts became due the customers refused to pay us on the ground that the goods were not shipped promptly;" do you mean by that that in the majority of instances that was the situation of the overdue accounts? 1856

A. I think that would be so in majority of the amount; as to the number of accounts I don't know. I really think that that was the main cause of slow payment on the part of customers.

Q. And you say that you suggested to Mr. Dockendorf in some of these cases that new bills be made out as of the date of acceptance of the goods by the customers and that he lend upon those bills?

A. Yes.

Q. And he declined to do that?

A. Yes.

Q. When you were under examination by Mr. Wolf at the last hearing that you were examined and were asked concerning the interview at Mr Dockendorf's office before you went to Mr. Crisp's office did you endeavor at that time to recall all that took place? 1857

A. Yes.

Q. And did you endeavor to state accurately what took place?

A. Why, I endeavored to avoid stating some things. I think my testimony shows that.

1858 Q. What was it that you were trying to avoid stating?

A. I was avoiding stating the fact that Mr. Dockendorf wanted me to buy gowns.

Q. When you did state it to-day you stated that Mr. Dockendorf wanted to know whether you could go on and continue in business?

A. Yes.

Q. Was that the fact?

A. Yes.

Q. Was it the fact that you wanted to continue business prior to that interview?

A. Prior to my interview with Mr. Williams on
1859 Sunday night.

Q. And up to the time of the interview with Williams it was your desire to continue in business, was it not?

A. Yes.

Q. Was that ever discussed between you and Mr. Dockendorf before, whether you should stop or continue in business?

A. Well, no, I don't think that it was.

Q. Now, did Mr. Dockendorf, on the preceding occasion when you got the money from him, the amount of which you don't recall and which we have told you was $7,500, did he offer that sum without
1860 any suggestion on your part?

A. You mean without a request from us for the money?

Q. Yes.

A. No, I presume not.

Q. You presume, don't you know? Didn't you ask him for the money?

A. Well, I don't recall the actual asking for it but of course that was our method of doing it. If we needed it to meet our notes Mr. Dockendorf knew it as well as I did for that matter, and he knew we had to have the money.

Q. Weren't you urgent about it? 1861

A. About that particular loan, you mean?

Q. Yes.

A. I don't know. I know that it was important that we have it. It was absolutely necessary that we have it and my recollection is that I wanted to pay some accounts at that time but the only thing, I think we only got enough from Dockendorf to meet our notes maturing.

Q. When you got that money from Mr. Dockendorf did you know that you were going to shut down?

A. No.

Q. Did you think you were going to shut down? 1862

A. No, I can't say that I thought we were going to shut down. I never thought of shutting down until after I had seen Mr. Williams on Sunday night. It was merely a change of my attitude, a change of sentiment. Mr. Williams had never made a report to me direct before and I knew that he was very much concerned and I was at that time and I determined that I would have to quit although I don't think that Mr. Williams showed by his figures at that statement on Sunday night that there was a deficit.

Q. So that on Sunday night you weren't satisfied that you were insolvent?

A. I personally was not satisfied that we were insolvent. I know that Williams had that impression. 1863

Q. Williams thought so but you didn't?

A. I would rather put that as unconvinced. I was unconvinced.

Q. If the figures had clearly shown it you would have been convinced?

A. Yes, and as I stated, Williams had really not made a balance. I think he had all or felt he had all the figures necessary to make it, but it wasn't in balance.

1864 Q. Did the figures prove to you that you were in an insolvent condition?

A. No, I can't say that they did.

Q. Had you received any figures prior to that?

A. No.

Q. Or that made you believe that you were in an insolvent condition?

A. No.

Q. So that the first time that your mental attitude with regard to your solvency or insolvency changed was on this Sunday night after Mr. Williams presented certain figures to you?

A. Precisely.

1865 Q. And that is absolutely so?

A. That is absolutely so.

Q. Now, isn't it a fact that at the interview on Monday when you say you were taciturn and Mr. Williams was silent and Mr. Dockendorf was stormy if not profane, that Mr. Dockendorf expressed a feeling that it wasn't quite square on your part to get that money from him a few days before.

Q. And did he not also express the feeling at that time that it wasn't quite square on your part to give these bills of lading or the duplicates of them over to the bank?

1866 A. Well, I could only answer that question by saying it is likely he did. I know he mentioned that and I had only seen him once before that since his return and I think it is quite likely that he did, although I don't actually recall it.

Q. Isn't it a fact that you stated at the time that you got this money from Mr. Dockendorf that these notes were maturing and that if they were not paid at maturity it would compel you to stop business without knowing just where you stood and that you desired an opportunity to find out just

where you stood so as to make up your mind whether or not to suspend or continue? 1867

A. No, I can't recall any such remark at all. I think what we talked about was needing it to meet notes and if we didn't meet our notes we might have to suspend business or something of that kind. It would be a natural topic of conversation; I can recall on more than one occasion calling his attention to the fact that if we didn't meet our notes we would have to and that was very likely one of those times.

Q. It is the fact that if you had not met those notes you would not have had the opportunity to get Mr. Williams' examination of the books before you suspended, the opportunity to determine whether you could continue or not? 1868

A. There is no question about that.

Q. And it did take Mr. Williams some time to ascertain those facts?

A. Yes.

Q. And your understanding was that he had to spend how long?

A. Well, let me see. That was on Friday and I know that he worked that night, Saturday night, that is without quitting at all and I presume he worked very late on Friday night and all day Sunday and very late Sunday night, probably.

Q. And when he came to you with the figures they were not yet in complete shape? 1869

A. No, he had a great deal of work on the figures but I went home. I stayed there probably half an hour or an hour.

Q. During the year 1910 had anyone done this kind of a job before, gone through the books and made a complete investigation to determine where you stood; the thing that Mr. Williams did Friday night and Saturday night and Sunday?

A. Well, I think the work that Williams did

1870 was more to form an expert opinion, an accountant's opinion as to the value of some of our assets and, of course, I didn't know it but it has developed since that we took a trial balance every month, but of course anyone knows that a going concern is worth more than a concern that quits and I think that our condition was so acute that it was doubtful whether we could continue or not and Williams viewed it from that standpoint. You asked if we had made any endeavor of just that character before. I don't know that I can answer that, I think that the accountants made a very complete

Q. You don't know what the accountants did, do
1871 you?

A. As a matter of fact I don't know what they did, no. They were employed by Mr. Dockendorf and reported to him.

Q. Who can testify as to the date when the kiting of checks began and the specific amounts that it amounted to at various times?

A. Well, I had a record of that every day, of the bank overdraft and I don't know—I doubt very much whether those little slips of paper that I got it on are in existence. That report was furnished to me sometimes by one person and sometimes by another, sometimes Mr. Williams made it up; that
1872 was lately the custom I think. It was generally made up, I think by the bookkeeper.

Q. What was his name?

A. Barlow.

Q. Would Mr. Williams have more knowledge on that subject than you?

A. Well, I don't know whether he would or not. I think that he would have, possibly, he would feel more certain as to figures than I do on the latter part, but prior to that time I doubt if he paid much attention to it and probably wouldn't have as good an opinion on it as I would.

Q. Now, you gave the maximum amount which you said was reached just before Thanksgiving Day and amounted to $50,000; what was the minimum amount? 1873

A. The minimum amount might be very small, Mr. Cohen.

Q. How much?

A. It might have amounted to a few hundred dollars and I don't mean to intimate in my testimony that there was never a day when our bank account didn't show an overdraft. I can recall that back in Conran's time he would give me reports on bank overdrafts and at times we would eliminate them. It wasn't an every day condition. 1874

Q. You mean to say that it wasn't a continuous condition?

A. No, not in that sense.

Q. If you were trying to make a diagram of it would you take a specific day and run a straight line up showing a gradual increase toward the maximum?

A. No, sometimes it dropped.

Q. Then would you make a series of increasing peaks?

A. I think that would put it more accurately.

Q. Can you give us any idea of the times of those peaks; I mean when the overdraft had reached a point where it was noticeable? 1875

A. No, I can't furnish that.

Q. Now, Mr. Wolf asked you as to how the hole in the process was made good and you answered by increasing loans with the Bank of North America and the Slater Trust Company so as to cover the overdrafts; now, where did the return of the bills of lading affect the situation?

A. Can you put that a little more explicitly; I don't know as I get it.

1876 Q. Of course, when the bank refused to honor your checks there was no overdraft; it only occurred when they honored your checks, isn't that so?

A. Well, our book overdraft occurred when we issued our check.

Q. That is the book overdraft?

A. Yes, but the actual overdraft would not come unless they paid an uncollected check.

Q. And when they stopped your check and didn't pay it there would be no overdraft?

A. They wouldn't have paid any money which they hadn't collected, no.

1877

Master: Then there would be an overdraft at the other bank where that check was deposited?

A. That is quite likely, I think, yes.

Recess Taken.

After Recess.

JOHN B. KEPNER, examination resumed.

By Mr. Cohen:

Q. Now, Mr. Kepner, let us see if we have clear
1878 upon the record the process and the holes in the process which had to be filled up. If you had $100 worth of merchandise at the bleachery that you wanted to sell—when you sold it the account against the customer would become an account receivable, would it not?

A. Yes.

Q. That account receivable would be turned over to Mr. Dockendorf?

A. Yes.

Q. And how much would you get on it?

A. $80.00, between $75.00 and $80.00.

Q. And how much would you reduce of the bank's loan in order to get that amount of merchandise shipped from the bleachery? 1879

A. Between seventy-five and eighty dollars, theoretically.

Q. The same amount?

A. Yes.

Q. And if your account at the bank was overdrawn or equally balanced you would have to put into that bank either directly, or indirectly through the kiting process, an equivalent amount?

A. Yes.

Q. And you had to do that before the goods were shipped from the bleachery?

A. Yes. 1880

Q. And when they were shipped then the account receivable arose which you had assigned previously to Mr. Dockendorf, isn't that right?

A. We considered that they were accounts before they were shipped.

Q. Both you and Mr. Dockendorf regarded it as collateral even before the goods were shipped and it was a mere process of executing the orders of the Schwab-Kepner Company at the bleacheries?

A. Yes.

Q. Now, outside of the fact that Mr. Dockendorf knew from time to time that you had maturing obligations at the banks which had to be met, did 1881
Mr. Dockendorf know what bank was going to receive the $80.00 which you got from him on the $100 worth of accounts that was to reduce that loan $80.00 so as to allow the $100 worth of merchandise to go out from the bleachery?

A. Your question is, did Mr. Dockendorf know the bank that would receive it?

Q. Yes?

A. I don't think that he did.

Q. That was a matter which was entirely within

1882 the management of the Schwab-Kepner Company and its officers, was it not?

A. Yes.

Q. You have already testified, Mr. Kepner, that some of the accounts which matured were met by notes?

A. Yes. Not necessarily matured, sometimes we sent the note before they matured.

Q. You mean that you sometimes discounted your bills by giving notes?

A. We discounted our accounts so to speak by giving notes which extended the time of payment.

Q. And that was done, of course, with the con-

1883 sent of the mills from whom you bought the goods?

A. Undoubtedly, their acquiescence was necessary.

Q. Did you have any stormy interviews with the mills on that subject?

A. No.

Q. They accepted them without very much discussion?

A. Oh, yes; hardly any discussion over it.

Q. But if your bills had not been paid at maturity or the notes not met at maturity there might have been some discussion you would say from your previous dealings with the mills?

1884 A. I think undoubtedly it would have seriously impaired our credit with the mills.

Q. But your credit down to the very last so far as the purchasing of goods was concerned was not impaired?

A. No.

Q. Did you have a line of credit; you know what I mean by a line of credit, a limited line of credit?

A. Well, I happen to know one or two instances where we had a limit. I can't say what that limit was in other cases but in one or two instan-

ces they stated to me the limit of credit which 1885
they would extend.

Q. And was there any overdraft of that limit in any case?

A. I don't recall whether it was strictly adhered to or not.

Q. Now, when the banks stopped honoring your overdrafts, that stopped the release of goods from the bleachery, did it not?

A. Well, I don't know that that statement is exactly so, Mr. Cohen. Of course, when they got our check, usually the goods were released, supposing that the check would be met at the bank on which we issued it.

Q. But when they found that the check 1886
wasn't met, that was the time when they came and demanded the return of the bills of lading from you?

A. Yes.

Q. Now, was the amount of the protested checks equivalent to the amount of goods representing accounts receivable assigned to Mr. Dockendorf that were covered by these bills of lading?

A. Why, the bills of lading which you refer to are those bills of lading which we turned over to the Slater Trust Company for goods 1887
shipped by Sales Bleachery and they did not include our entire bank overdraft.

Q. How much did your bank overdraft amount to?

A. I think that it was $50,000 approximately.

Q. If this arose in the manner in which you have testified, how did it happen that according to your testimony there was $125,000 of overdrafts at the bleachery while the extent of your overdraft on your bank that held the goods at

1888 the bleachery as security was not more than $50,000?

A. They didn't bear any relation to each other.

Q. Haven't you testified that they did?

A. No, I don't think so.

Q. You can't tell us today how that $125,000 overdraft at the bleachery arose, can you?

A. It arose by our selling more goods from the bleachery than the amount we put into the bleachery, plus whatever reduction of loan we made there. Is that clear?

Q. No, it isn't clear. You have told us that
1889 you had to reduce the amount of the loan at the banks or get in more goods if you were to release goods that were to be shipped out of the bleacheries. Now, if $50,000 was the amount of your overdraft with the banks how came it about that you had $125,000 of overdrafts at the bleacheries?

A. You have omitted—I said we either had to reduce the loan or ship in merchandise to the bleacheries. What I have testified to is the fact that we had sold $125,000 worth of goods more than we had bought into the bleacheries. We had ordered out from the bleacheries
1890 $125,000 more than we had put in.

Q. And that $125,000 represented or was the merchandise covered by accounts receivable which you say you already had assigned to Mr. Dockendorf?

A. Yes.

Q. So that the effect of that was that Mr. Dockendorff had $125,000 worth of accounts receivable which at the close of your business transactions became valueless?

A. Well, they hadn't been shipped.

Q. They became valueless, isn't that so?

A. That is my opinion, yes.

Q. Now, when this fact became clear to Mr. Dockendorf wasn't that occasion for part of the stormy interview that you had with him at which you got more money from him? 1891

Mr. Wolf: Which interview?

Mr. Cohen: The interview on the Friday, after Mr. Dockendroff's return.

A. Mr. Dockendorf did, I think, complain about the inflation of the bleachery overdraft if that is what you mean. You say when those facts became known.

Q. I am trying to find out, Mr. Kepner, if I can the facts that will lead us to an understanding of why you and Mr. Williams were so taciturn and Mr. Dockendorf so profane, and I am asking you whether this circumstance of the inflation of the bleachery overdraft to the extent of $125,000 was one of the circumstances that made you so? 1892

Mr. Wolf: I object, not in accordance with the testimony.

Q. Did you not testify that Mr. Dockendorf was very stormy and profane on Monday before you went to Mr. Crisp's office, isn't that so?

A. Yes. You were talking previously about Friday.

Q. Didn't you think that his profanity and his stormy attitude was justified by the discovery of this $125,000 of bleachery overdraft? 1893

A. Yes.

Q. And wasn't that one of the reasons that you were taciturn?

A. No, the reason—I was very gloomy as naturally I would be. I hadn't much to say. I hadn't any suggestions to make, I didn't mean anything in particular by that, except that I hadn't very much to say.

Q. As a matter of fact, if you had known the

1894 situation on Friday as you knew it on Monday would you have taken the $7500 from Mr. Dockendorf?

A. Well, no. I doubt if Mr. Dockendorf would have given it to us if I had presented—

Q. I didn't ask you that. I asked if you would have gotten it?

Mr. Wolf: I object as calling for the operation of the witness's mind on a hypothetical question.

Overruled.

1895 A. I testified that I told Mr. Dockendorf that I thought it necessary for us to stop business, that it was impossible for us to go on.

Master: On Monday?

A. Yes, sir.

Q. Well, now, I am talking about Friday.

A. If I had told him that on Friday and he had insisted upon giving us $7,500 in the face of that I don't know what my attitude would have been. I might have advised him not to.

Q. Would you have asked him to?

A. No, I don't think that I would have asked him for it.

1896 Q. On Monday you didn't ask him for any more money, did you?

A. No, I think not.

Q. You testified at page 703 in answer to a question regarding that Monday interview, "Did you have any talk with Mr. Dockendorf as to what was to be done?" "A. I think that Mr. Dockendorf said that we, I think his remark was, 'Well, you have got to see your creditors' as something that was necessary, something that was obvious. He didn't issue it as a desire or a command or any

thing of that kind but he came to that conclusion after my remarks." Do you remember that? 1897

A. Yes.

Q. And that was in answer to Mr. Wolf's question at the last hearing at which you were examined, concerning that Monday interview?

A. That was in answer to Mr. Wolf's question?

Q. The record so discloses, don't you recall it?

A. I don't recall whether he asked me the question or not.

Q. Don't you remember that Mr. Cohen interrupted when you said, "I know Mr. Dockendorf was very much excited about the situation," by asking you, "Did he swear, Mr. Kepner?" and you answered, "Of course I hate to say it but I am afraid he did?" 1898

A. Yes.

Q. And do you remember then being asked, "Did you have any talk with Mr. Dockendorf as to what was to be done?" and you said, "I think that Mr. Dockendorf said that we, I think his remark was, "Well, you have got to see your creditors" as something that was necessary, something that was obvious."

A. My impression is that it was in answer to a question of Mr. Wolf's.

Q. And did you answer it truthfully?

A. Yes. 1899

Q. You answered the truth?

A. Yes.

Q. That was what Mr. Dockendorf said when you presented the situation to him on Monday?

A. Yes.

Q. You know of no reason why you should change that testimony, do you?

A. No.

Q. Did you have any idea in your mind in the course of that discussion of any possibility after

1900 you had seen Mr. Crisp of finding some way by which you might go on doing business?

A. Well, of course I felt very much depressed at that time. Whether I had any idea at that time that we could possibly go on or not I don't know. I don't know that I ever did give up the idea of that possibility until the Trustee in bankruptcy had been appointed.

Q. You mean until after the Receiver was appointed?

A. No, I mean until after the Trustee was appointed.

Q. Even up to the time the Trustee was elect-

1901 ed?

A. Of course we had figures presented which showed insolvency but I thought I might make an arrangement with the creditors to proceed even on that basis.

Q. So that at the Monday meeting you had not finally abandoned the idea of a possible continuance in business before you saw Mr. Crisp?

A. I think I felt it incumbent upon me to throw up my hands and let matters be taken control of by the creditors and let them decide what to do. I felt incompetent to go on as it was.

1902 Q. Did your illness have anything to do with that decision?

A. I think very probably it did.

Q. You weren't as optimistic as you had been when you were well?

A. I think undoubtedly that is so.

Q. Now, will you say that there was no discussion at that time, before you went to Mr Crisp's office, with Mr. Dockendorf as to the possibility of your continuing in business and getting out of your difficulties?

A. I don't recall anything being said along that line.

Q. Nothing said about your continuing in business at the Monday interview with Mr. Dockendorff? 1903

A. I don't recall that anything was said about that, no.

Q. Is it not the fact that your bank overdraft jumped from $5000 to $50,000 in two days?

A. I think that is extremely unlikely. I don't think that is so.

Q. You were asked by Mr. Wolf whether the accounts which you transferred to Mr. Dockendorff increased the amount of the collateral which he held and you answered that it did; did not the loans that Mr. Dockendorff made to you increase also? 1904

A. Undoubtedly. I don't know that it is very clear to me just what you mean. I don't know how to answer it in any other way, it is so obvious.

Q. Every time that you transferred accounts to Mr. Dockendorff you also got money from him, did you not?

A. I think that that was generally so.

Q. And it was peculiarly so towards the closing days of the business before the failure?

A. Well, I don't know just what you mean by that. 1905

Q. I mean that the more you kited checks, the more money you had to get from Mr. Dockendorff to meet the kited checks, isn't that so?

A. Well, yes, that is so as far as it goes.

By Mr. Wolf:

Q. Mr. Kepner, you were asked by Mr. Cohen concerning the Monday interview whether or not anything was said with regard to the Schwab-Kepner Company continuing in business and you

1906 said no. In answer to the question which I put to you you said that Mr. Dockendorf said that you should buy goods and endeavor to avert the calamity at least for a short while. Which is the correct answer?

A. As I understood the questions they were both correct. From Mr. Cohen's questions I concluded that he meant whether there was any discussion between us as to the method or plan or possibility of going on and I can't recall that there was any such thing; and you are trying to reconcile that?

Q. With your answer to me that Mr. Docken-
1907 dorf said that you should continue in business and buy goods and endeavor to avert the calamity at least for a short while.

A. That is so. Mr. Dockendorf said that our credit was not exhausted and we could buy goods and—

Q. How do you reconcile that with what you said to Mr. Cohen that nothing was said about continuing in business?

Mr. Cohen: Objected to upon the ground that he is cross examining his own witness.

Objection sustained.

1908

Q. Mr. Kepner you testified in answer to my question that Mr. Dockendorf said to you that you should continue in business and buy goods and endeavor to avert the calamity at least for a short while and in answering Mr. Cohen's question you said that nothing was said with regard to continuing in business; now which is the fact?

Mr. Cohen: Objected to upon the ground that it is cross examination of his own witness.

Objection sustained.

Q. In answer to Mr. Cohen's question you said that at the Monday interview nothing was said regarding the continuance in business, what did you mean by that? 1909

A. I thought that I answered that there was no business method talked of. The fact is I said nothing about continuing in business. I understood from the line of Mr. Cohen's questions that he wanted to know whether there was any discussion of the matter had.

Q. You referred then in answering Mr. Cohen's question to a plan or method of conducting the business?

A. Absolutely to that effect. There was no discussion of the matter. 1910

Q. Now, when Mr. Dockendorf said to you that you should continue in business and buy goods and endeavor to avert the calamity at this Monday interview, did he say anything as to what he would do to help the Schwab-Kepner Company do that, and if so, what?

Mr. Cohen: Objected to upon the ground that it is not proper re-redirect.

Overruled.

Mr. Cohen: Objected to upon the further ground that it has already been covered.

Overruled. 1911

A. My memory is very hazy on that. I think probably Mr. Dockendorf did suggest that he would —at that day, every day we had notes maturing, we had pressing obligations to meet and of course the Friday preceding was the last day on which we got any money from Mr. Dockendorf and that left Saturday and Sunday and Monday obligations to take care of and I think Mr. Dockendorf said, I am not sure about this, but it runs in my mind that he asked if he met what was absolutely necessary

1912 in the way of obligations whether we could continue.

Q. What did he say with respect to loaning the company money, if anything?

A. Just what I said. He would give us money to meet those obligations. I think that was mentioned.

Q. Now, then, you also testified in answer to Mr. Cohen that Mr. Dockendorf said at the Monday interview that you would have to meet the creditors of the Schwab-Kepner Company.

Mr. Cohen: Objected to upon the ground
1913 that that was in answer to Mr. Wolf's question and is therefore not proper.

Question withdrawn.

Q. You testified in answer to questions that Mr. Dockendorff said that you would have to meet the creditors of the Schwab-Kepner Company?

A. He said something to that effect.

Q. Do you recall what he said?

Mr. Cohen: Objected to, it was brought out on re-direct examination and was covered both on that and cross examination.

Objection sustained.

1914 Q. Mr. Kepner, can you state in what connection Mr. Dockendorf said that you would have to meet the creditors of the Schwab-Kepner Company? What preceded that statement?

Mr. Cohen: Objected to upon the ground that it was brought out on redirect examination by Mr. Wolf and also on re-redirect; the Monday conversation has been gone into exhaustively on two examinations by Mr. Wolf and one by me.

Master: I think Mr. Wolf, that particular phase was covered on the redirect and noth-

ing additional was introduced on cross ex- 1915
amination.

Objection sustained.

Q. Have you stated everything that Mr. Dockendorf said with regard to your meeting the creditors of the Schwab-Kepner Company and if you haven't please state it.

Mr. Cohen: Objected to upon the ground that the Monday interview has been gone over several times in the course of the examination and the witness was given opportunity to correct his testimony if he so desired.

Objection sustained. 1916

Q. Mr. Kepner, you testified in answer to Mr. Cohen's question that you and Mr. Dockendorf figured a date when the Schwab-Kepner Company could approximately get onto a so-called bill of lading basis; do you recall what that date was?

A. No, we had no date in mind, it was a length of time which would probably be necessary to elapse.

Q. What length of time?

A. I don't know. I couldn't recall except that we were reducing—

Q. Well, what — 1917

Mr. Cohen: I submit that the witness should be allowed to complete his answer.

A. (continued)—except that we were reducing our bleachery overdraft.

Mr. Wolf: I move to strike out the answer as not responsive.

Mr. Cohen: Objected to upon the ground that it is apparent from the witness's answer that he is endeavoring to state his best recollection of the period.

Motion allowed.

1918 Q. You testified in answer to Mr. Cohen's question that the majority in amount of overdues or charge backs were caused by late deliveries, is that correct?

A. I think that is probably so, yes.

Q. Did you have any discussion with Mr. Dockendorf about these overdues not caused by the late deliveries or did the discussion to which you have already testified cover all overdues from whatever cause or occasion?

A. I wanted to use all overdues as a basis for loans and some of these overdue accounts were, of course, not caused by our being slow in delivery,
1919 some of them were accounts that didn't pay on time.

Q. Then I understand your testimony to be that you asked Mr. Dockendorf to make loans on the overdues whether occasioned by late deliveries of the Schwab-Kepner Company or any other cause and Mr. Dockendorf declined to do so?

A. Yes.

Q. You used the word "overdues," is that synonymous with charge backs?

A. I considered it synonymous in this case.

Q. Has anything ever been said to you by Mr. Dockendorf or anyone in his behalf with respect to
1920 any possible legal proceedings that might be taken by Mr. Dockendorf against you?

Mr. Cohen: Objected to as not proper re-redirect examination on the ground that it is an effort to impeach his own witness.

Mr. Wolf: I wish to ascertain, your Honor, whether anything has ever been said by Mr. Dockendorf or any of his representatives that might intimidate him and keep him from telling the whole truth regarding his transactions with the Schwab-Kepner Company.

Mr. Cohen: I object upon the ground that this is not the time to ask the question and in the second place it is impeaching the witness called by Truster's counsel. 1921

Overruled.

Question read.

A. No.

By the Master:

Q. At this Monday interview did Mr. Dockendorf give you any reason for suggesting that you purchase more goods and endeavor to continue in business for a short time?

A. I have never been on the witness stand very much. I don't know as I have ever been before this and it is very difficult for me to testify. At times I feel that I can give better the impressions that exist in my mind. Mr. Williams has a much better memory than I have. I have always had a very poor memory and I have never tried to remember anything that I could put down in writing. 1922

Q. You have testified that Mr. Dockendorf said something of that sort to you. What I want to know is what the surrounding circumstances were, if he said anything else in that connection or assigned any reason for your doing that. I want you to try and give the conversation. 1923

A. I would rather not answer that question because I have heard of an interview and I may confuse the two, an interview that I was no present at.

Q. You mustn't testify to any impressions created by any interview you have heard of. I want to know if he said anything at that time in connection with his suggestion that you buy more goods and endeavor to continue in business for a period; whether he said anything as to his reason for making such a suggestion?

A. Well, I am very reluctant to answer that be-

1924 cause of my lack of confidence in my memory. I don't feel absolutely certain in the matter.

Q. Do you mean by that that you don't recall anything that Mr. Dockendorff said in that connection?

A. I have a recollection of a remark that Mr. Dockendorf made and whether it was made just at that time I can't testify.

Q. Was it at that interview?

A. I can't say whether it was made at that interview or not.

Q. If it wasn't made at that interview when was it made?

1925 A. Some other interview. I can't place the interview.

Q. Was it made at a prior interview or a later one?

A. Well, it could not have been later.

Q. Would it have been a prior one?

A. Yes, it must have been a prior interview.

Q. Then it wasn't with reference to the situation revealed by this statement which Mr. Wolf made?

A. I am unable to determine whether it was at that time or at some preceding time.

Q. You don't recall then that anything was said by Mr. Dockendorf about it except to sim-

1926 ply ask you whether you could buy more goods and continue in business for a short period and thus postpone the calamity or something to that effect?

A. Yes.

Q. That is all you remember about it?

A. That is all I can testify to, yes, sir.

By Mr. Wolf:

Q. Which preceding interview have you in mind at which it is possible that Mr. Dockendorf might have made the statement?

Mr. Cohen: Objected to.

Master: I think his memory has been exhausted as to that.

Question withdrawn.

Q. What did Mr. Dockendorf say to you, without fixing the interview?

Mr. Cohen: Objected to incompetent, irrelevant and immaterial.

Sustained.

Q. What did Mr. Dockendorf say to you as to the reason for the continuing in business of the Schwab-Kepner Company, whether made at the interview on Monday or at some preceding interview?

Mr. Cohen: Same objection.

Objection sustained.

Sworn to before me this 10th day of March, 1911.

Adjourned to March 13th, 1911 at 10.30 A. M.

1930 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of proceedings before Edwin G. Adams, Referee in Bankruptcy, as Special Master, at the rooms of the New York County Lawyers' Association, 165 Broadway, in the City of New York, on the petition of John E. Dockendorf, on Monday, March 13th, 1911, at ten thirty o'clock in the forenoon.

1931

APPEARANCES:

JULIUS HENRY COHEN, Esq., and GERARD B. TOWNSEND, Esq., Attorneys for the Petitioner.

RALPH WOLF, Esq., Attorney for the Respondent.

1932

CYRUS WILLIAMS, recalled.

Further direct examination by Mr. Wolf:

Q. Mr. Williams do you recall when Mr. Dockendorf returned from Europe in the Fall of 1910?

A. Yes.

Q. It was about Thanksgiving Day, was it not?

A. The first communication I had from him was over the telephone on Friday, the day following Thanksgiving Day, the 26th of November.

Q. What did he say to you and what did you say to him? 1933

A. That was the first actual knowledge I had of his return. I knew he was expected, though.

A. I can only testify from what remains in my memory. I won't swear that what I am about to recite will cover all that passed.

Q. Give us the substance of such as you can recall that did pass.

A. Well I presume there were the usual salutations. Mr. Boekendorf said he wanted certain information from me bearing on the condition of the business, of the business of the Schwab-Kepner Company, and finally he concurred in a 1934
promise made by me to him that on Monday morning I would have ready a financial statement of the condition of the Schwab-Kepner Company as I believed it to be.

Q. You say he wanted certain information concerning the Schwab-Kepner Company. What information did he tell you he wanted?

A. It was all embodied—such matters as he recited were embodied in the larger arrangement which came between us that it would all be contained in this financial statement.

Q. Did he tell you that he wanted a statement of the assets and liabilities of the Schwab-Kepner 1935
Company?

Mr. Cohen: Objected to as leading.

The Referee: I think that is all right. Objection overruled.

A. I don't know that he used those words, but a financial statement was necessitated by that.

Q. What did you do after this conversation?

A. Got to work and from the books and records of the Schwab-Kepner Company reached a conclusion in figures.

1936 Q. Of the assets and liabilities?

A. Of the condition of the Schwab-Kepner Company.

Q. Did you work Friday night?

A. I did.

Q. How late?

A. Oh probably eleven o'clock.

Q. Then did you work all day Saturday?

A. I did.

Q. And how late Saturday night?

A. Between eleven and twelve.

Q. Did you work all day Sunday?

A. Well I got to work somewhere ten or half
1937 past ten and remained until after midnight.

Q. Did you have any talk with Mr. Kepner on Sunday?

A. Yes, Mr. Kepner came in from Cranford, I think, about half past six or seven o'clock in the evening. I say I think that because there was nothing specific to fix the hour in my mind. My impression is it was after daylight had departed.

Q. At whose request?

A. I informed him that I wanted to talk to him about some matters, I don't remember just what it was, and I don't know whether he suggested he would come in or I suggested he should
1938 come.

Q. Where did you 'phone him?

A. At his residence?

Q. Cranford, N. J.?

A. Yes.

Q. Can you tell us the substance of what was said between you and Kepner when he arrived, concerning the financial condition of the company?

A. I was not ready for that, but in view of the fact Mr. Victor was present I did not enter into it in his presence and I cannot remember just on what points I wished to consult him to get in-

formation from him, but I knew that was the 1939
object of his visit. There was no reason why these things should be fixed positively in my mind; I might be able to tell if I referred to my working papers, but I haven't them before me at the present time.

Q. How late did you work Sunday night?

A. I think we left the office between two and three o'clock Monday morning.

Q. And when next did you see Dockendorf?

A. Monday morning about half past ten or eleven.

Q. Between the interview on Friday and Monday morning had you had any talks with Mr. 1940
Dockendorf?

A. None that I remember. I think not; I won't swear there were none; if there were, there were none of importance.

Q. You saw Mr. Dockendorff Monday morning?

A. Yes.

Q. Where?

A. At his office.

Q. Beside you and Mr. Dockendorf and Mr. Kepner was there anyone else present,—who else was present?

A. Mr. Kepner and I left the office of the Schwab-Kepner Company together and we went 1941
direct to Mr. Dockendorf's office.

Q. Was anyone else present at the interview you had with Mr. Dockendorf, if you had any on that day.

A. We did have an interview, yes.

Q. Was anyone else present?

A. I couldn't say there was no one else present at the interview. I won't say yes or no; I have a faint recollection of Mr. Sudman, he was in and out of the room once or twice at Mr. Dockendorf's request.

Q. Can you tell us what was said between you,

1942 Mr. Dockendorf and Mr. Kepner at the Monday interview?

A. I am going to make what may be an unusual request, but it comes from ignorance. I am going to ask that I may have a moment or two of the Special Master's time before I go any further. I don't know whether it is objectionable or not—

Mr. Cohen: We have no objection.

Mr. Wolf: I have no objection.

The Master and the witness then retired and subsequently resumed the stand.

1943 Q. I am going to withdraw the question for a moment. At or before the time of the taking place of this Monday interview had you completed your work?

A. I had.

Q. And had ascertained the financial condition of the Schwab-Kepner Company as you believed it to be?

A. Yes sir.

Q. Did you report that to Mr. Dockendorf?

A. I had the rough working papers there.

Q. What did you say to Mr. Dockendorf with respect to the work you had done?

1944 A. I don't know that there was any comment about it by either of us.

Q. Did you show Mr. Dockendorf the results of your work?

A. Either I did or Mr. Kepner; I think it possible that Mr. Kepner may have handed him the papers.

Q. Was it in written form?

A. In pencil, yes.

Q. And you copied that?

A. No copy was made; if it exists it exists in its original form.

Q. It was given to Mr. Dockendorf? 1945

A. It was handed to them. It was not left there.

Q. What became of it?

A. I think I have it; I won't swear I have it. I think it is in the office of the Trustee.

Q. You can produce it during recess if it is?

A. If it is in the office of the Trustee I will produce it.

Mr. Wolf: Can he testify to the contents of the paper, subject to correction when it is produced?

Mr. Cohen: Subject to a motion to strike out if the original is not produced, and subject to correction if the original is produced, we make no objection to the witness testifying to his best recollection of its contents. 1946

Witness: I want to say before I make a search for the paper that in the event of my not being able to find it, or all of it, there is a possibility that Mr. Kepner may have taken it to the office of his attorney and if he did I am not sure I kept them all together.

Q. What did the paper show the assets and liabilities and deficits to be?

Mr. Cohen: Objected to. 1947

Q. What did the papers show?

A. It showed that the surplus and capital were wiped out and there was a deficit of nearly three hundred thousand dollars.

Mr. Cohen: I move to strike that out on the ground that it involves a conclusion.

The Referee: Yes, that should be stricken out. What you should state is what the total figures were on both sides.

Witness: I must ask you to excuse me—from memory.

1948 Mr. Wolf: We want it to appear that we oppose that motion to strike it out.

We ask Mr. Dockendorf to produce that paper if he has it.

Witness: I do not think he has it.

Q. Can you tell the amounts shown on the papers that you prepared; can you tell the amount by which the liabilities exceeded the assets?

Mr. Cohen: Objected to on the ground that is not proving the contents of the document but is merely asking for certain deduction.

1949 Objection sustained.

Q. As a result of your labor, Mr. Williams, what did you find the assets and liabilities to be?

A. I must decline to state from memory of the figures.

Q. Can you refresh your recollection by the papers in his possession?

A. If I find them, yes.

The Referee: Can you tell us in round figures?

Witness: No, sir. My reason for that is this, that I have seen so many figures since
1950 that I may be all wrong and I don't want any conclusion to be drawn that the rest of my testimony is as accurate as my recollection of figures.

Q. What was the first thing done at the Monday interview?

A. The final sheets, the final working sheets, the summary, the documents which showed in a few items the condition of the Schwab-Kepner Company were handed to Mr. Dockendorf either by Mr. Kepner or by myself, I don't know which.

Q. Now will you tell what conversation then en-

sued between you and Mr. Dockendorf and Mr. 1951
Kepner or between Mr. Kepner and Mr. Dockendorf?

A. I can only state that to my best recollection.

Q. All right, state that; all we ask is your best recollection.

A. The first remark that I recall was a remark by Mr. Dockendorf, made as if a sudden truth were driven home to him, something like this: "My God, you have nothing to do but meet your creditors," or "See your creditors." There was some discussion in a few words then regarding the figures and then Mr. Dockendorf remonstrated and asked Mr. Kepner something to this effect: "Why did you let me 1952
give you that seventy five hundred dollars on Friday?" And "What can you do to cover it or make it good?" Or something to that effect. I don't know how often that was said; these two men were very much excited, both of them, and they said the same thing time and time again during the course of the interview, sometimes almost the identical words. The next thing Mr. Dockendorff made a statement to Mr. Kepner that he felt that Mr. Kepner owed more to him than anybody else, something to that effect and substance; that he, Dockendorff, had done all that he could to help him along and as the result that his, Dockendorff's 1953
condition, was worse than if he had stopped. I don't know that those were the words but that is as I understood the meaning. Then I don't know what Kepner replied. I know he said a great many times that he didn't see there was anything for him to do but to quit. That was the word he used; and there was urging by Mr. Dockendorff to Mr. Kepner as to whether in some way or other he could protect him, and a statement made by Mr. Dockendorff somewhat to the effect that he had made a mistake in cabling a message advising that the business be kept going until his return, and as a

1954 result of that cable his collateral condition was injured to the extent, if I remember rightly, I think he said about twenty-five thousand dollars; in addition that he had given him seventy-five hundred dollars on Friday on his own statement that it would be wise for him to do so, or that it would be better if he should do it. —I don't know what terms were employed,—anyway that he had been persuaded by Kepner to give him this money. Then there was an effort to find out by Mr. Dockendorff whether Kepner had some means of securing Mr. Dockendorff. I don't know that is the right way to put it, —anyway as to whether Mr. Kepner had
1955 any means of adding to Mr. Dockendorff's security. And this thing was reiterated and reiterated and talked about and retalked about, and no headway made, and it was unpleasant, and I got rather tired of it and disgusted and left the room.

Q. Have you given the substance now of what you recall of the interview?

A. I have given the substance of the interview between Mr. Kepner and Mr. Dockendorf at which I was present.

Q. Do you recall anything being said by either Mr. Dockendorff or Mr. Kepner respecting the continuance in business by the Schwab-Kepner
1956 Company?

A. I think it was admitted by both that the condition did not admit of the continuance of the business.

Q. Do you recall anything being said by Mr. Dockendorff to the effect that Mr. Kepner owed it to him morally and legally to continue in business?

Mr. Cohen: Objected to on the ground that it is leading?

Objection sustained.

Mr. Wolf: I have endeavored to exhaust his recollection by general questions.

After discussion.
Objection sustained. 1957

Q. Do you recall anything that was said with respect to Mr. Kepner's company's attitude to Mr. Dockendorff respecting particularly the continuance in business?

A. Mr. Dockendorff made the statement more than once that he felt the conditions justified him in saying that Mr. Kepner owed more to him than to anybody else. I mean the paramount duty, we will say, I do not mean in regard to an amount of money,—the paramount duty.

Q. Did he say in what respect it was a paramount duty? 1958

A. Because he had continued not only before he went away, but he advised continuance by his cable and that immediately on his return that he had given him seventy five hundred dollars to meet maturing notes on that day, the notes maturing on that day.

Q. Did Mr. Dockendorff say anything further to Mr. Kepner as to what he considered it Mr. Kepner's duty to be in continuing the business?

Mr. Cohen: Objected to as leading. If you will stop after the words "what his duty would be" I think the question is proper in form. 1959

Mr. Wolf: I have endeavored to exhaust this witness's recollection.

Mr. Cohen: I do not think it is fair, after the witness has testified he did not think there was any conversation about continuance of business—

The Witness: I did not say that.

Mr. Wolf: I did not hear him say that.

Mr. Cohen: It was admitted by both of them that the condition did not admit of a continuance of the business.

1960 Witness: That is correct, that is what I said.

Q. Did Mr. Dockendorff say anything to Mr. Kepner as to whether or not he thought Mr. Kepner should continue in business, or what did he say on that subject?

A. I suppose that question hinges as to what you mean by the continuance in business, in view of the remark made by Mr. Cohen. If you will explain just what you mean.

Q. I mean did Mr. Dockendorff say anything on that question?

1961 A. If you mean by continuance in business, Mr. Wolf, the ability to go on indefinitely, that was plainly and patently recognized by both as an impossibility.

Q. I don't mean go on indefinitely. Did he say anything about a temporary continuance of the business?

A. I think he did.

Q. What did he say on that subject?

A. I think the question was raised more as a surmise or as a suggestion or possibly in an endeavor to arrive at what Mr. Kepner's condition of mind was as to the continuance long enough to digest the situation, and it was coupled with a 1962 statement which had been made, I don't know how many times previously, to the effect that the paramount duty of Mr. Kepner so far as his ability lay, or the ability of the Schwab-Kepner Company, was to protect Mr. Dockendorf.

Q. Now you have not yet told us what Mr. Dockendorf said to Mr. Kepner on the subject of continuing in business for a temporary period, if he said anything.

Mr. Cohen: Objected to on the ground that the witness has answered the question.

Objection overruled.

Q. (Last question read.)

Mr. Cohen: I suggest that when the witness has said that there was something said and it was made at the suggestion "or possibly in an endeavor to arrive at what Mr. Kepner's condition of mind was as to the continuance long enough for them to digest the situation"—now he has stated—

Witness: I said more than that.

Mr. Cohen: "And it was coupled with a statement which had been made, I don't know how many times previously, to the effect that the paramount duty of Mr. Kepner, so far as his ability lay, or the ability of the Schwab-Kepner Company, was to protect Mr. Dockendorf."

Witness: That is correct.

The Court: I do not think he has necessarily stated what Mr. Dockendorf said. I think Mr. Wolf is entitled to ask him again what was said.

Can you tell us specifically what was said with reference to the business being continued for a short time, if anything of that sort was said?

Witness: I am not sure whether anything was said in my hearing or whether I learned it afterwards from Mr. Kepner after we left the room, and I don't know. —I would like the Master's advice as to whether I ought to answer under those conditions.

The Referee: You can answer as to what you recall was said while you were there.

The Witness: On that point my memory is not clear as to whether I heard it I

1966 was not present in the room all the time —or whether I was told by Mr. Kepner afterwards.

Q. What is your best recollection on the subject?

Mr. Cohen: I object to that because the witness has already stated he has no recollection as to whether it was said in his presence or whether he heard it subsequently from Mr. Kepner.

The Referee: Objection sustained.

Mr. Wolf: I am asking him his best rec-
1967 ollection as to where it was said, whether in the presence of Mr. Dockendorff or outside.

Mr. Cohen: The witness has stated that his best recollection is that he don't remember which it was.

Q. What is your recollection as to whether or not anything was said while you and Mr. Kepner while in Mr. Dockendorff's office by Mr. Dockendorff respecting the continuance temporarily of the business of the Schwab-Kepner Company?

Mr. Cohen: Objected to on the same
1968 ground.

Objection overruled.

Q. (Last question read.)

A. I do not think it is safe for me to swear to that.

Q. Do you recall anything —

A. I am not sure enough that I want to go on record. I am not certain that I care to put myself on oath in that respect.

Q. Do you recall anything being said by Mr. Dockendorff to Mr. Kepner to the effect that Mr. Kepner owed it to Mr. Dockendorff morally and

legally to continue in business at least for a temporary time? 1969

Mr. Cohen: I object to that as leading and fully covered by the witness's testimony?

Mr. Wolf: I am trying to exhaust this witness's testimony by general questions and it seems to me I have a right to call his attention to any specific point I want to know, whether anything was said or not. It may be that he testifies in answer to a general question that he don't know whether or not anything more was said, but when I call his attention to a specific 1970 point he might say, "Yes, I remember that was said."

The Referee: What about the fact he is your own witness?

Mr. Wolf: He was the clerk of Mr. Dockendorff and he is not a friendly witness.

After discussion.

The Referee: I do not think I can allow that.

Objection sustained.

Mr. Wolf: Sustained merely on the ground it is leading?

The Referee: On the ground it is leading. 1971

Q. Mr. Williams, will you tell us anything that Mr. Kepner said to you regarding the continuance in business of the Schwab-Kepner Company for a temporary period only?

Mr. Cohen: I object to that on the ground it is not binding upon Mr. Dockendorff.

Mr. Wolf: I think it is. It is part of the *res gestae*. Mr. Williams was Mr.

1972 Dockendorff's clerk, and if Mr. Kepner said anything to him we are entitled to have that go in the record.

After argument.

The Referee: Objection overruled on the ground that it certainly does not call for a statement of anything said by Mr. Dockendorff.

Q. (Last question read.)

A. Mr. Referee, am I entitled to answer that from the standpoint I cannot separate to my own satisfaction, and that devolves on the point

1973 ther what I heard was said in my presence or whether what I heard was said in my presence or whether it was told to me immediately after we left the office.

The Referee: The question is what Mr. Kepner said to you on this subject. Not what anybody else said.

Mr. Cohen: I understand your Honor has ruled that that excludes any report by Mr. Kepner to him of any conversation between Mr. Kepner and Dockendorff; it is pure hearsay.

Mr. Wolf: I have asked what Mr. Kep-

1974 ner said to him on the question of continuing.

The Referee: The question does not call for hearsay evidence. The question is what did Mr. Kepner say to you regarding the continuance of the business.

Witness: I understand the question excludes any remark he may have made as to what was said between Mr. Kepner and Mr. Dockendorff. Do I understand that correctly?

The Referee: I do not intend you to understand anything by that. If you will

tell us what Mr. Kepner said to you I will either let it stand or strike it out. 1975

Witness: I don't know whether what I am about to relate was stated in my presence or not. I am not sufficiently sure of it that I am going to make it if it happened in my presence, or whether it happened afterward between Mr. Kepner and myself, I don't know.

The Referee: If Mr. Kepner said anything to you he must have said it in your presence. That is all you are asked for, as to what statement Mr. Kepner made to you.

1976

Mr. Cohen: In view of the last statement of the witness I ask that the time be fixed. Obviously, if it was a statement made by Mr. Kepner after the bankruptcy proceedings were begun—

Mr. Wolf: He said Monday, and the proceedings were not begun until Tuesday. It is his conversation on Monday that I want.

Mr. Cohen: All right, if it is limited to the conversation with Kepner on Monday, and the witness so understands, I withdraw the last objection.

Witness: May I be permitted to give, in a few words, a sketch of— 1977

The Referee: Answer the question. There is no reason why you should not. If Mr. Kepner said anything to you on that day and you recall it, state it.

Witness: I don't know whether Mr. Kepner stated it or whether it was stated by Mr. Dockendorff in my presence.

Mr. Wolf: All right; in either event state what it was.

Mr. Cohen: I object to that.

The Referee: The question you asked

1978 relates to a conversation with Mr. Kepner.

Q. Will you state what was said on Monday to you respecting the continuance of the Schwab-Kepner Company, either by Mr. Dockendorff or by Mr. Kepner?

Mr. Cohen: Objected to as involving the elicitation of evidence which may be hearsay.

The Referee: Separate it.

Q. What was said by Mr. Dockendorff on the
1979 subject of the continuance of the business of the Schwab-Kepner Company?

Mr. Cohen: Objected to on the ground it has already been covered.

Objection overruled.

A. Mr. Dockendorff speaking to Mr. Kepner, whether as a suggestion or an expression of his opinion—

Q. Don't tell us that. Just tell us what he said. Don't try to analyze his frame of mind, but tell us what was said.

A. I am getting a little rattled I must confess.

Q. I ask you for what was said and then you
1980 start off and tell me it was either a suggestion or opinion or thought, and not what Kepner said. I don't ask you for that. We will draw our own conclusions. I want you to try and repeat the substance of what Mr. Dockendorff said; I don't ask you to repeat the words. I ask you to repeat the substance of what was said.

A. A remark was made by Mr. Dockendorff to Mr. Kepner to the effect that it might be advisable—I am speaking of my best recollection—it might be advisable to continue in business temporarily.—I don't know which. The thing was chased round

and round the table so often I don't know just when 1981
these remarks were made,—that Mr. Dockendorff felt the paramount duty of Mr. Kepner was to him and he had time and time again asked Mr. Kepner whether it was possible for him in some way to protect him against the additional losses which he had incurred by reason of his cable message and by reason of his giving to Mr. Kepner seventy-five hundred dollars on Friday after his return.

Q. Now, Mr. Williams, did Mr. Dockendorff say anything to Mr. Kepner as the reason why Mr. Kepner should continue in business temporarily?

A. I don't know whether these were his reasons or not; these were his remarks.

1982

Q. Did he make any other remark as a reason why that should be done?

A. I am speaking now of the interview between Mr. Kepner and Dockendorff.

Q. Yes.

A. I don't recall. This thing had been chased around the table so often I got out of patience and left the room.

Q. Did he make any other remark that you recall, to you, without Mr. Kepner's being there?

A. Yes, before I left the office I was called into Mr. Dockendorff's office.

Q. What did he say to you then?

1983

A. He said something like this: "Williams, here is a chance for you to save me fifteen or twenty thousand dollars," and I answered, "Will you tell me how?" and he said, "Why, Kepner knows how to do that." I said, "I think the man's credit is entirely busted; I don't know how he is going to save you or anybody else or do anything." And he did not explain in what way I was to save his fifteen or twenty thousand dollars, except he didn't think Mr. Kepner's credit was entirely gone, and in some way which he didn't define, he thought he could save fifteen or twenty thousand dollars.

1984 Q. Was anything else said?

A. Simply that I said it was entirely hopeless, the day for saving anything was gone; it was too late; that ought to have been considered long before. There was no use trying to crawl out of a hole; the thing was to keep out of it.

Q. As I understand it this latter part of the conversation was between you and Dockendorff alone, without Mr. Kepner?

A. Mr. Kepner was not present.

Q. After you left Mr. Dockendorff's office on that day, where did you go?

A. I don't know whether Kepner was waiting for
1985 me in the hall upstairs on the 11th story of 20 Broad Street or whether he was waiting for me in the hall on the ground floor, but when I met him he was all upset; he recognized that himself. The first thing he said, "Will you take me somewhere to lunch; I don't know that I want to eat, but somewhere where I can sit down and collect my thoughts." He said, "I am all in; I am all up in the air," so I took him down to Chris Koehlin's, near the Produce Exchange, and after he got quieted a bit he did eat some lunch.

Q. Were you present when Mr. Dockendorff gave Mr. Kepner the seventy five hundred dollars on the
1986 Friday preceding?

A. No, I had no knowledge of it until after.

Q. Did you ever have any conversation with Mr. Dockendorff prior to the Monday interview respecting the seventy-five hundred he gave to Mr. Kepner?

A. None whatever.

Q. Your employment with the Schwab-Kepner Company started about July 5, 1910?

A. On the morning of July 5th, yes sir.

Q. How shortly after that did you have the conversation with Mr. Dockendorff respecting the

financial condition of the Schwab-Kepner Company? 1987

A. Within three or four days after I got there I think.

Q. What was said at that conversation?

A. I made the remark that I knew they had no surplus and I did not think they had any capital, and it was a question of how much deficit there was. That was the way it looked to me.

Q. What did Deckendorff say to you?

Mr. Cohen: Are we to go over all this? We have been over and examined and re-examined.

Mr. Wolf: I would like Mr. Cohen to point out to the Referee any reference to this examination that exists in the testimony. 1988

After discussion.

The Referee: You have not covered this particular period before?

Mr. Wolf: We want to offer to show that very early in the game Mr. Deckendorff knew, or should have known that this company was insolvent.

After argument.

Objection overruled.

Question withdrawn. 1989

Q. Did you say anything to him as to why you thought the company had no capital and surplus and you thought there was a deficit?

A. I think—I won't be positive, but I think I brought it up at that time, if not, at some other time not long after, and I think it was at that time I summed it up that here was a concern with their accounts all hocked, and their goods all hocked, and it didn't take much guessing to know that they were in bad shape.

1690 Q. Did you say anything with respect to the unsecured liabilities of the company?

A. No, I don't think I did; I don't think there was any conversation at that time.

Q. Is it a fact that at this time that in addition to the secured creditors, that is secured by the merchandise accounts, there were unsecured creditors of the company?

A. There were.

Q. And do you know approximately how much?

Mr. Cohen: I object to that upon the ground that that calls for a conclusion as to figures which can only appear from the books.

1691

The Referee: I will sustain that. I think it is shown on the statements anyway.

Mr. Wolf: Not in July.

The Referee: Objection sustained.

Q. You know what the indebtedness was on the first of August 1910, as shown by the trial balance sheet, did you not?

A. I did.

Q. Was there any substantial decrease in the indebtedness during the month of July 1910 to unsecured creditors?

1692

Mr. Cohen: Same objection.

Objection sustained.

Q. Can it be ascertained from the book what the indebtedness to unsecured creditors was in July, 1910?

A. Yes, it can be ascertained, but I don't know how long it will take; I don't know whether there is a trial balance sheet as of the first of July or not. I assume there is.

Mr. Wolf: Mr. Referee, in connection with your ruling I hope you considered

that I have asked this witness whether he knew what debts were unsecured at the time of this interview with Mr. Dockendorff. Now if he says yes to that it seems to me that is binding upon Mr. Dockendorff, and I have a right to have that fact appear on the record without going into an examination of the books,—just the same as if Mr. Dockendorff was on the stand, I would have a right to ask him "Did you know what the debts were at a certain period of time,"—just the same as Mr. Cohen asking Mr. Kepner on his cross examination about the statement of 1908, 1909 and 1910. 1993 1994

The Referee: They are only statements that could be shown on the books.

Q. Mr. Williams did you ever mention to Mr. Dockendorff in the month of July, 1910 what you ascertained the unsecured liabilities of the Schwab-Kepner Company to be?

A. In figures? No.

Q. Did you ever tell him what they were, other than figures?

A. I spoke of them as being a substantial amount.

Q. Were you ever given a list of the maturing obligations of the Schwab-Kepner Company? 1995

A. Yes.

Q. How often would you be given that list?

A. You mean in detail?

Q. Yes.

A. Oh, for the period perhaps between August and November, twice or three times.

Q. Then would you be given the gross amount of maturing obligations in addition to the details?

A. I assume that the details showed a footing. I won't state that positively.

1996 Q. Did you receive at any time a record showing from day to day what the maturing obligations were?

A. Yes, I think so. Yes, twice or three times

Q. Twice or three times a day?

A. No, no, twice or three times during the period beginning with the first of August and up to the bankruptcy.

Mr. Cohen: You mean on two or three occasions?

Witness: Yes.

Q. And what did you do with them?

1997 A. You mean a specially written copy prepared in addition to the records shown by the diary of the Schwab-Kepner Company?

Q. Yes, in addition to the diary.

A. Oh, there was a special prepared list either twice or three times. I think these lists were prepared in duplicate.

Q. Did you ever send a copy to Mr. Dockendorff?

A. Mr. Dockendorff asked for such a list on two occasions that I know of.

Q. Did you send it to him?

A. I don't know whether I sent it or brought it to him; I cannot tell you.

1998 Q. In what book of account were the maturing obligations of the Schwab-Kepner Company kept?

A. As to notes payable they were kept in the note book under the day they matured, and as to the open accounts they were kept in the diary.

Q. How often did you see those books?

A. What do you mean by seeing them?

Q. Look at them.

A. Inspect them, look at them?

Q. Yes.

A. I couldn't tell you.

Q. Did you look at them almost daily?

A. Oh, no.

Q. From time to time did you look at them? 1999

A. From time to time, yes.

Q. Were you informed at all respecting bleachery overdrafts, so called?

A. Yes. My recollection is that from somewhere toward the end of July, or it may be the early part of August up to the end of October, that I was informed almost daily.

Q. Of the bleachery overdrafts so called?

A. Yes.

Q. Did you transmit any information concerning the bleachery overdrafts to Mr. Dockendorff?

A. Yes.

Q. How often? 2000

A. I may say that, to put it in two words, almost daily. I cannot say when that began with Mr. Dockendorff.

Q. There has been considerable testimony, Mr. Williams, with respect to the transaction in October, 1910, of the Sayles Bleachery, by which they got back a quantity of goods which they had shipped?

A. Yes.

Q. You recall that transaction, do you not?

A. I recall such a transaction, yes sir.

Q. When was the first you heard of the transaction? 2001

A. When do you refer to, Mr. Wolf? What part of the transaction do you refer to?

Q. When did you first hear anything at all about the desire on the part of the Sayles Bleachery to have a return of the goods?

A. Not until after the bills of lading had been surrendered.

Q. When was this?

A. I think it was the first Monday in November.

Q. Who informed you of that?

A. Mr. Kepner.

2002 Q. Where were you then?

A. In Mr. Kepner's private office.

Q. What did you then do?

A. I went down to Mr. Townsend's office.

Q. What firm?

A. Mr. Townsend is Mr. Dockendorff's attorney.

Q. What conversation ensued between you and Mr. Townsend?

A. I reported to him that I had just learned from Mr. Kepner that after I had left the office on Saturday night he had satisfied the Sayles Bleachery representative by giving up the bills of lading and I said if he desired to contest the ownership
2003 that I was giving him the first information I had, and as he was Mr. Dockendorff's legal representative I looked to him to take such action for his principal as he thought fit.

Q. What else was said?

A. I think some questions were asked as to the detail of it.

Q. Go ahead, let us have the whole conversation.

A. And then I said, "If you want to prepare any papers, and injunction or anything else, if you wish, if you so instruct me, I will go to the Transportation Company and notify them verbally that you are going to serve them." That offer was de-
2004 clined. My recollection is that Mr. Townsend made the remark, something to the effect, that they could not deny the knowledge of the check kiting for they were not in a position to deny it, something to that effect,—I don't pretend to give his exact words.

Q. Speaking of the kited checks, how long had you known of that practice?

A. It had been the practice of the Schwab-Kepner Company to draw checks way ahead of the time of their delivery to the parties to whom they were payable—

Q. No, I ask you how long you had known of the 2005
kiting of the checks?

A. Well, referring to it, as a practice, is that what you mean?

Q. Yes.

A. Well I knew about it almost from its beginning, in substance from its beginning. When it became a practice you refer to?

Q. Yes. Did you ever have any conversation with Mr. Dockendorff respecting the kiting of checks?

A. Without a doubt.

Q. Fix the first conversation you can recall with him respecting the kiting of checks; how long after 2006
that —

A. I suppose I might as well tell it as have it dragged out. When this thing had run up to somewhere between five and ten thousand dollars, as my recollection is, I went to Mr. Dockendorff's office for the express purpose of reporting it. Mr. Dockendorff was not in and I called Mr. Sudman, his chief clerk into Mr. Dockendorff's private office and told him this was assuming a practice that in my judgment was exceedingly dangerous and I wished he would inform Mr. Dockendorff as soon as he came in. I heard nothing more about it, but three or four days later, not hearing anything and 2007
feeling that I wanted to know I had discharged my entire duty to my principal, I went to Mr. Dockendorff's office again and stated the facts, feeling it was a settled habit and getting larger. I do not know the figures; they are not fixed in my mind. Some days subsequent to that Mr. Kepner and myself were in Mr. Dockendorff's office and I brought up the subject of this kiting checks because I wanted it thoroughly thrashed out, but it was not stopped.

2008 Q. Can you fix the time of the first conversation, the one you had with Sudman?

A. What day did Mr. Dockendorff sail? The 29th of October, was it?

Mr. Townsend: The 29th, I think.

Witness: Without anything to refer to, and speaking only as my memory serves me, the first conversation with Mr. Sudman I should think was about three weeks before Mr. Dockendorff sailed.

Mr. Cohen: Will you put that in months, state the months.

2009 Witness: About three weeks prior to October 29th.

Mr. Cohen: That would make it about the beginning of October.

Witness: Somewhere in the early part of October.

Q. Did you know that goods had been billed by the Schwab-Kepner Company—I refer to gray goods—to different brokers, without the goods ever having been ordered by the brokers, and without the brokers knowing the goods had been billed to them, and then the accounts thus apparently created, transferred to Dockendorff?

2010 A. That is a matter of knowledge subsequent to the bankruptcy.

Q. You never knew it before the bankruptcy?

A. I knew there were charges made, but as to the conditions under which those charges were made, that they were not in every respect *bona fide* sales—I want to qualify that. I mean there were sales there that were stated to me that Mr. Kepner had the privilege,—if he could sell the goods before they were disposed of by the other parties, of cancelling the sale and making the sale provided he could get a better price.

Q. Did you ever hear any discussions between

Mr. Dockendorff and Mr. Kepner regarding sales 2011
by the Schwab Kepner Company?

A. That is a very broad question.

Q. I mean with regard to the quantity of goods they were to sell.

A. In dollars?

Q. As compared with the amount of maturing obligations.

A. Oh, I see. Yes, in a conversation between them, I don't know whether Mr. Dockendorff stated to Mr. Kepner or Mr. Kepner stated it to Mr. Dockendorff, but in the conversation that passed between them—

Mr. Cohen: Will you fix the time? 2012

Q. Fix the time of the first occurrence.

A. I think it was in August, about the middle.

Q. Yes; go ahead.

A. That is only my recollection. I have nothing to fix the date from, nothing to refer to that would refresh my memory. I don't know which of these made the statement but it was in the course of conversation between them there was some mention as to the fact that to meet obligations their sales would have to average about so much a day.

Q. Was that subject frequently discussed between Mr. Dockendorff and Mr. Kepner subsequent to that time? 2013

A. Subsequent to the first time?

Q. Yes.

Mr. Cohen: Objected to.

Question withdrawn.

Q. Was this matter a subject of further conversation between Mr. Dockendorff and Mr. Kepner subsequent to the first interview?

Mr. Cohen: I object to that. Counsel has constantly allowed his own imagina-

2014 tion and theory to affect him. He said in the course of conversation this comes out. Now what seems to be extraordinary becomes ordinary in its contact, and to say whether that is the subject of conferences frequently is to place an entirely different impression on the record.

Mr. Wolf: I will change the conference to conversation.

Mr. Cohen: I object to you calling it a subject of conversation.

Mr. Wolf: I insist on the question.

Objection overruled.

2015 Q. (Last question read.)

A. Yes. I don't know how often.

Q. Did you ever hear any conversations between Mr. Dockendorff and Mr. Kepner where the question of the credit of the Schwab-Kepner Company was discussed? Just answer that yes or no.

A. I cannot answer it yes or no. I don't know what you mean by discussed.

Q. Well, talked about.

A. Yes.

Q. When is the first time you recall it was talked about?

2016 A. It is absolutely impossible for me to fix the date, Mr. Wolf.

Q. Cannot you fix it approximately?

A. I know that Mr. Kepner had stated to Mr. Dockendorff in my presence, and it was stated to me outside Mr. Dockendorff's presence a number of times, I don't know whether it was ten times or fifty times, somewhere between the two probably, that the credit of the Schwab-Kepner Company was good ever since they had been in business; they had been more or less slow in meeting obligations, but he considered the credit as good as it had ever been.

D. Did Mr. Dockendorff ever speak to you concerning the credit of the Schwab-Kepner Company? 2017

A. I cannot recall whether he did or not; I don't remember.

Q. Now can you recall the first time that the question of credit of the Schwab-Kepner Company was discussed between Kepner and Dockendorff?

A. I think it was talked about at the time Mr. Dockendorff and Mr. Kepner and I had a balance sheet in front of one of us.

Q. You mean the August first balance sheet?

A. Yes; I won't swear positively, I think it was. 2018

Q. Will you tell us what was said between you gentlemen with regard to the credit of the Schwab-Kepner Company, tell us everything that was said at that interview.

Mr. Cohen: I object to that on the ground that it had been fully gone into and if it is gone into again it requires me to cross examine on it.

After argument.

Objection overruled.

Q. (Last question read.) 2019

A. I cannot tell everything that was said.

Q. Well tell what you recall.

A. There was a statement made by Mr. Kepner and reiterated, just as he was in the habit of pulling the wool over Mr. Dockendorff's eyes in regard to the financial condition of the company, that their credit was good, that they were no slower than they had been.

Q. In what connection was the credit of the Schwab-Kepner Company discussed?

A. As I remember it the first time at which it was discussed when Mr. Dockendorff and Mr.

2020 Kepner and I were together was on or about the time of the July balance sheet.

Q. In connection with what phase of the business of the Schwab-Kepner Company was the credit of the company discussed?

A. I think merely as stated by Mr. Kepner as one of his arguments to bolster up the opinion which he expressed that he could go along and would pull out of his financial difficulty.

Q. Were you present at any conversation between Mr. Kepner and Mr. Dockendorff at which was discussed the question of giving notes to the creditors whose obligations were maturing?

2021 A. I cannot answer that question Mr. Wolf, I cannot separate what may have been in my mind and what may have been said between Mr. Kepner and myself or between Mr. Kepner and Mr. Dockendorff when I was present.

Q. Do you recall any conversation between either you and Mr. Kepner or you and Mr Dockendorff respecting the giving of notes to creditors whose obligations were maturing?

A. I don't recall any specific conversation of any specific note or any specific account at this moment.

Q. Do you know what the general custom or
2022 practice was with respect to the obligations of creditors of the Schwab-Kepner Company whose indebtedness were maturing?

Mr. Cohen: I object to that on the ground that it assumes it was a custom or practice.

Mr. Wolf: I asked him if he knows what the custom or practice was?

Mr. Cohen: If any.

Mr. Wolf: All right; put in "if any."

A. A very considerable part of their indebtedness was satisfied by notes.

Q. You don't mean settled by notes? 2023

A. All right; notes were given for it.

Q. How shortly after your arrival at the place of business or connection with the Schwab-Kepner Company did you ascertain the manner in which notes were given?

A. I cannot fix the specific date.

Q. Well, shortly after?

A. Oh, yes.

Q. How shortly, a week, ten days, two weeks or three weeks?

A. Yes, probably within three or four days; it may have been the first day, I don't know.

Q. Now did you ever have any conversation 2024
with Kepner or Dockendorff, or both of them, respecting the postponing of the debts of the creditors upon extensions of time?

Mr. Cohen: I ask that that be separated. It asks for conversations with Dockendorff and conversations with Kepner all in the same breath.

Mr. Wolf: I am going to separate it, he can answer yes or no.

A. I have had such conversations, yes.

Q. With whom?

A. Mr. Kepner.

Q. When was the first that you can recall? 2025

A. I think about September, sometime in September; there is nothing to fix it in my mind at all.

Q. Will you please tell us what was said.

A. I don't recall any conversation as to the general indebtedness of the Schwab-Kepner Company. What I speak of refers to some specific account, or it may have been two accounts.

Q. All right, let us have what was said.

A. Simply Mr. Kepner's statement that he had not the slightest doubt these people would take

2026 notes falling due shortly—that is no great length of time—after the actual maturity date of the bills.

Q. What do you mean by that, Mr. Williams?

A. Let me illustrate. Suppose the diary showed that he had so managed his shipments and purchases that a very considerable amount fell due in one week, and that the next week or the two weeks afterwards, the maturing obligations were very much lower. His intention was merely to shift some of the obligations falling due during the heavy week to a comparatively short time later when the obligations maturing were lighter,
2027 and distribute them as might have been done in the first place with a little forethought.

At this point a recess was taken until 1.45 P. M.

After Recess.

CYRUS WILLIAMS, resumes the stand.

Further direct examination by Mr. Wolf:

Q. Did you ever have any conversation with either Mr. Dockendorff or Mr. Kepner respecting the size or volume of business of the Schwab-
2028 Kepner Company?

A. I don't know from what point to answer that. I know Mr. Dockendorff on one occasion said that if they were to increase their business as they had, the accommodation which he could afford them would be insufficient for their requirements.

Q. Do you recall any conversation between you and Kepner, or between you and Dockendorff, or between Dockendorff and Kepner, respecting the size or volume of business which the company was to do?

A. Not in figures, or not directly.

Q. With whom did you ever have such a con- 2029
versation?

Mr. Cohen: There is no evidence that he had any such conversation.

Mr. Wolf: He says not in figures or directly. My inference would be that there was some sort of a general conversation.

By The Referee:

Q. What do you mean?

A. I do not recall that at any time it was said it would have to be two hundred and fifty thousand or three hundred thousand, or any stated amount. 2030

By Mr. Wolf:

Q. I am not talking about amounts but about suggestions made by anybody in respect to increasing or decreasing the volume of business which the company was to do.

A. Conversations did take place; how often I don't know.

Q. With whom?

A. Between Mr. Dockendorff and Mr. Kepner at which I was present and possibly took some part.

Q. When was the first one you can recall, in 2031
point of time?

A. I think about August 15.

Q. What was said?

A. There was merely a reference to the maturing liabilities, to meet the maturing liabilities,—that meant the sales averaging about so much a day.

Q. What was said on that subject?

A. Nothing more than I can tell you it may have been enlarged upon.

Q. Do you mean that is what was said?

A. Yes.

2032 Q. By whom?

A. I don't know.

Q. You were the only other person present?

A. Yes, at the time.

Q. Can you recall any conversation in which the losses on sales was mentioned?

A. I know that I had expressed an opinion as to the fact that they were making sales that did not yield a profit.

Q. To whom did you say that?

A. To Mr. Dockendorff, and Mr. Dockendorff in Mr. Kepner's presence.

Q. When was the first time you mentioned the
2033 subject to Mr. Dockendorff?

A. I cannot tell you.

Q. Can you fix it approximately?

A. It is a sheer guess.

Q. What is the best recollection?

Mr. Cohen: I object to that on the ground the witness has stated it would be a sheer guess. Where it is a sheer guess he cannot have any recollection. We have been over all this subject once before.

Objection overruled.

Q. Can you fix the time approximately as com-
2034 pared with the time when you started your work with the Schwab-Kepner Company?

A. The only peg on which I can hang the time is this: That there was at least one date, or approximate date fixed by Mr. Dockendorff when he expected to go away, and the date that I first heard was very much previous to the date on which he actually did go. I don't know whether that happened once or twice but it certainly did happen once, and it was perhaps ten or twelve or fifteen days before the time when he first expected he would be absent, or then stated he

would be absent. That is the only way I can 2035
fix it.

Q. Can you tell whether or not you had any conversation with Mr. Dockendorff within a month after you came to the place of business of the Schwab-Kepner Company, respecting sales of goods without profit?

A. No, I do not think that it was within a month.

Q. Can you tell whether it was within two months?

A. Yes, I think it was somewhere between those two times.

Q. Now, will you tell us what was said at 2036
that conversation on this subject?

A. As I have stated, it was an expression of opinion by me that with maturing obligations and sluggish market, that in my judgment it was impossible for them to make sales the aggregate that were going to net them a profit.

Q. Do you recall any conversation at which the subject of buying goods on longer time and selling them on shorter time was discussed?

A. There was something of that kind referred to by Mr. Kepner, but I did not take that seriously.

Q. When was that discussed? 2037

A. I don't know, Mr. Wolf.

Q. Was it within two months of the time you came to the Schwab-Kepner Company, according to the best of your recollection?

A. It might have been but I think it was rather later than that.

Q. Now, can you tell us what was said?

A. Mr. Kepner, in the course of one of his talks, as to his reasons for being able to continue and to better his financial condition, said that he had under consideration this idea of endeavoring

2038 to buy goods on longer time and sell them, as of course he could do, if he made the price attractive, on short time. I did not take it seriously, though.

Q. From the time you came to the Schwab-Kepner Company down to the time of the receivership did the Schwab-Kepner Company borrow any money from the banks?

A. They were already indebted to banks, and there was a readjustment of loans; sometimes a loan would be reduced and sometimes

Q. Were any loans increased?

A. Well, without the figures I would prefer not
2039 to answer.

Q. Do you know of any loan that was increased?

A. Increased, as where a thing went up and down, yes, but I don't know it was increased as from the beginning standpoint.

Mr. Cohen: You do not carry those figures in your head, do you?

Witness: No sir, I cannot; I know how treacherous memory is in figures, and I don't try to carry them unless they stick there.

Q. Can you produce the figures given to Mr.
2040 Dockendorff at the interview preceding the date of the receivership?

A. I have not been able to find them all Mr. Wolf, and I have scratched my memory with a fine tooth comb and I think it not at all impossible that either Mr. Kepner or Mr. Kepner's attorney has the other sheets.

Q. Will you produce what you have found?

A. Witness produces papers.

Q. You hand me two sheets?

A. I do.

Q. And do I understand these two sheets

numbered respectively 309 and 310 were exhibited to Mr. Dockendorff at the Monday interview? 2041
A. Yes.

Mr. Wolf: I ask that these sheets be marked in evidence.

The Referee: Is there any objection?

Mr. Cohen: No.

The Referee: They are received in evidence and are marked, page 309 is marked R301, and page 311, R302.

The above exhibits are as follows:

2042

2043

2044

ASSETS AND DEFICIENCY.

				Net Value
Accounts receivable	455900.58			
Deduct goods not released	125338.51	330562.07		
Considered of no collectible value				
Accounts receivable, net value			95469.24	
J. B. Kepner				235092.83
Bills receivable		23685.95	23685.95	
Considered of no collectible value		50088.38		
Bills receivable, net value			42071.42	
Inventory as of Nov. 26, 1910, approximated				8016.96
Cash		210000.00		210000.00
Fixtures		642		642
Deficiency as per statement		4116.15		4116.15
2045				356820.53
				814688.47

United States District Court

District of New Jersey

In the matter of
The Schwab-Kepner Co., Bankrupt — In Bankruptcy

Ex. R 301 March 13, 1911.
Edwin G. Adams
Referee

LIABILITIES AND CAPITAL STOCK

J. E. Dockendorff approx			
Notes payable for mdse	262507.27	262507.27	
" loans unsecured	168914.45		
2046 " loans against merchandise collateral	4000.00		
Accounts payable	164560.00	337474.45	
Deduct Dartmouth Mfg. Co. claim resisted & believed withdrawn	147706.78		
Capital Stock	8000.03	139706.75	
		75000.00	
			814688.47

United States District Court

District of New Jersey

In the matter of
The Schwab-Kepner Co., Bankrupt — In Bankruptcy

Ex. R 302 March 13, 1911.
Edwin G. Adams
Referee

TORN PAGE

Q. This exhibit No. 301 has an item, "Deficiency as per statement 356,820.53." What does that item indicate? 2047

A. That accepting the capital stock as a liability to stockholders, as well as the general indebtedness there was a shortage of that amount.

Q. That is the liabilities exceeded the assets by that figure?

A. Including in the liabilities the $75,000 of capital stock.

Q. The sheet marked "Assets and Deficiency" purports to show approximately the value of the assets of the company?

A. Yes.

Q. And the sheet marked "Liabilities and Capital Stock," which is Exhibit R302, purports to show the liabilities as of the date? 2048

A. As near as I could get at them.

Q. What other sheets are missing, if any?

A. Profit and loss statement which shows in its final result a deficiency there shown under assets and deficiency.

Q. The figure of 356,820.53?

A. Yes.

Q. And you haven't the copy?

A. At least I have been unable to find a copy

Q. Have you any other papers made up by you on this between Friday and Monday, known to Mr. Dockendorff? 2049

A. I had some schedules in my hands, but I do not think they were ever referred to; I only took them in case any questions arose.

Cross examination by Mr. Cohen:

Q. On the Friday that you say Mr. Dockendorff let Mr. Kepner have seventy-five hundred dollars, were you at Mr. Dockendorff's office?

A. I was not.

2050 Q. How soon did you learn of Mr. Dockendorff's return from his trip?

A. I do not recall that I had any notice that he actually had returned until he spoke to me over the telephone about four or half past four on Friday afternoon.

Q. It was before that time that you had sent the communication to Sudman which has been put in evidence, containing your remark that Dockendorff was "going to get his medicine now," was it not?

A. Mr. Dockendorff at that time was away.

Q. It was before his return that you made that
2051 communication to Sudman?

A. Yes.

Q. And it was before that time that these bills of lading had been returned to the Sayles Bleachery?

A. Yes, sir.

Q. And it was before that time that you had discovered the amount that the bleachery overdraft had reached was so large a sum?

A. That is too indefinite, Mr. Cohen; I don't know whether I can answer that intelligently.

Q. At all events just prior to Mr. Dockendorff's return certain incidents took place in the Schwab
2052 Kepner Company's affairs?

A. Yes.

Q. That made definite and certain in their practical effect certain ideas which you had had in mind for some time?

A. That is true.

Q. And that produced what you now say was the climax in the whole situation?

A. I called it a climax, although the actual climax was not reached until after Mr. Dockendorff's return. In my mind the climax was reached when the check kiting got out of control.

Q. Now, that situation you said somewhere in the testimony today was reflected in some manner in Mr. Dockendorff's attitude on that Monday, was it not? 2053

A. That situation was reflected—will you please repeat that.

Q. I will withdraw that question and ask another. Was there anything unusual in Mr. Dockendorff's attitude on that Monday?

A. Very decidedly so.

Q. Would you say there was an explosion?

Mr. Wolf: I object to that question as too indefinite unless

Question withdrawn. 2054

Q. What was there unusual in his manner?

A. Well he was very excited and—I can best illustrate that by the way it occurred to me. It seemed to me as if here was a case where a man suddenly realized that he was face to face with an emergency which he had hoped to prevent, or striven to prevent, whatever the action might be in his mind, and he realized that no longer could it be prevented.

Q. You said in part of your testimony today you used the expression "Kepner pulled the wool over Mr. Dockendorff's eyes." What do you mean by that? 2055

A. Just what I said.

Q. Won't you describe that a little more in detail?

A. Well it seemed to me that on a number of occasions that Mr. Dockendorff had been persuaded by Mr. Kepner, or had fallen through some means in adhering to what Mr. Kepner said as to his ability to pull through in violation, it seemed to me, of sound sense; as if he were,—well sometimes I have said hypnotized.

Q. Was anything said at the Monday interview

2056 by Mr. Dockendorff or Mr. Kepner concerning security that was promised by Kepner on Friday for the seventy-five hundred dollars which he had gotten from Dockendorff?

A. Undoubtedly this question was referred to, but as to security I cannot recall and I will not state whether Mr. Dockendorff made any statement about what he was promised on Friday or not.

Q. Is it not a fact, Mr. Williams, that Mr. Dockendorff said to Kepner on Monday, "Now you know perfectly well I gave you this seventy-five hundred dollars upon your promise that by Monday morning you would know more about your situation and
2057 would have the security for me to secure this seventy-five hundred dollars," or words to that effect.

A. I cannot answer that yes or no.

Mr. Wolf: Can you answer it at all in your own way?

The Witness: It was undoubtedly implied in some way when Mr. Kepner got that seventy-five hundred dollars that it was to be covered. But in the early part there was such an excitement in tone and manner and words that I don't care to say yes or no positively on that question. I don't know; it may have been so.

2058

Q. Now you testified today that you went down to Mr. Townsend after your discovery that these bills of lading had been returned by Kepner to the Sayles Bleachery?

A. I did.

Q. Did you go down there for the purpose of assisting Mr. Dockendorff through Mr. Townsend in endeavoring to secure that security?

A. I felt, Mr. Cohen, that my duty all along was to report the facts. As to what it might be decided to do, that was beyond me.

Q. If there was anything that you could have

done legitimately to have secured for Mr. Dockendorff the merchandise covered by those bills of lading, you would not have declined to do so, would you? 2059

A. Legitimately, no.

Q. And there was some discussion between you and Mr. Sudman before Mr. Dockendorff's return as to the relative legal rights of the Sayles Bleachery and of Mr. Dockendorff to those goods, was there not?

A. I think that when I went down to Mr. Townsend's office—I think Mr. Townsend 'phoned to Mr. Sudman and asked him to come over and the point that was not clear in my mind was as to the right of the Slater Trust Company to recall goods except those that were released by checks received and accepted by them in reduction of the loan. If they had any other checks received in any other way perhaps it was not clear to me they were entitled to protection on that point. 2060

Q. Did you and Mr. Dockendorff have any conversation on Friday over the telephone with reference to those bills of lading?

A. I do not recall whether we did or not.

Q. Do you recall that Mr. Dockendorff expressed any surprise that those bills of lading were turned over to the Sayles Bleachery?

A. At what time? 2061

Q. Either on Friday or Monday or any subsequent date?

A. Subsequent to Friday, yes.

Q. When?

A. I think that was mentioned on Monday, but I won't swear to it; I think it was.

Q. Did he upbraid Mr. Kepner for having done that?

Mr. Wolf: When was this?

Mr. Cohen: On Monday.

2062 A. He upbraided Mr. Kepner for a number of things, and if that was a part of the subject of conversation on Monday it was certainly included in his reproach.

Q. Now so far as you know, Mr. Williams, and in endeavoring to aid your memory, this Monday interview was the first interview Mr. Beckenderff had with Mr. Kepner outside of the Friday interview after his return from abroad?

A. Yes, all that I know of, yes.

Q. And if Mr. Beckenderff was upbraiding Mr Kepner for all of the things that had been done during his, Mr. Beckenderff's absence, would he

2063 not naturally have included this matter?

Mr. Wolf: I object to this as incompetent, and irrelevant and as assuming something

The Referee: Objection sustained.

Q. Is there any doubt in your mind that at the Monday interview the action of Kepner in turning over the bills of lading to the Sayles Bleachery was referred to by Mr. Beckenderff, and Kepner was censured for it?

A. I am not so certain of its being referred to that I am going to testify about it.

Q. What is your best recollection on that sub-

2064 ject?

Mr. Wolf: I object to that. The witness has testified he is not certain about it, that is, certain enough to swear to it he said

Objection overruled.

A. Well the part of the interview during which I was present covered so much that I think it is altogether likely it did; I am inclined to think it did, but I won't swear positively to it.

Mr. Wolf: Unless the witness is ready

to testify positively under oath that it did 2065
I move to strike out the answer.

The Referee: I will let the answer stand.

Motion denied.

Q. Did you display, so far as you know, any heat at that interview with Kepner?

A. I was there more in the capacity of a listener than anything else; I said very little.

Q. Did Mr. Duckenduff display heat?

A. A good deal.

Q. Throughout the interview?

A. Well of course he couldn't keep at high pressure all the time. After he had freed his mind of a good many things my recollection is 2066
that he tempered down a little, but even at the time I left the room there was no question about it, Mr. Duckenduff was considerably excited.

Q. Would you say it was the attitude of a man who had at last realized that he had been stung?

A. Very much so.

Q. And stung by a man he regarded as his friend, and whom he had helped and benefitted?

A. I cannot say how he regarded Mr. Kepner. His words were full of reproaches.

Q. Did he say anything to Mr. Kepner upbraiding Mr. Kepner for having taken advantage of his, Duckenduff's, confidence in him, Kepner? 2067

A. I do not remember anything in these words in substance?

Q. Read the question please.

Q. (Question read.)

A. Well, the first conclusion after the realization of the situation of the figures I produced, as I remember it, was that Mr. Duckenduff reproached Mr. Kepner quite bitterly in respect to the seventy five hundred dollar transaction of the previous Friday and that was reiterated and reiterated in several ways several times.

2068 Q. Did Mr. Dockendorff in the Monday interview refer to the fact that advantage had been taken by Mr. Kepner of his, Mr. Dockendorff's absence abroad to do things which would not have been permitted if he, Dockendorff, had been here and had known of them?

A. I cannot answer yes or no.

Q. Have you any recollection on that subject?

A. As to that interview?

Q. Yes sir.

A. I am not prepared to swear, Mr. Cohen.

Q. You testified in your direct examination about a cable which Mr. Dockendorff had sent to
2069 his office during his absence to continue making advances to the Schwab-Kepner Company?

A. I don't know that I said anything about the cable to continue to make advances; it was a cable to continue until his return.

Q. Which meant that the office should continue to make advances on accounts receivable?

A. Certainly it would have to be.

Q. That is what you understood?

A. I did.

Q. Now does that refresh your recollection as to whether or not Mr. Dockendorff said anything to Mr. Kepner at the Monday interview concern-
2070 ing the manner in which he, Kepner, had treated him, Dockendorff, during his absence abroad?

A. I cannot make any other reply than that which I have made.

Q. And by that reply you mean what?

A. I mean that I am not prepared to answer positively whether Mr. Dockendorff did or did not make any reference to the fact that things had been done which would not have been permitted had he been present.

Q. Did he not say that as the result of that

cable his collateral had been injured to the 2071
extent of twenty five thousand dollars?

A. He said that as a result of that cable that his office had made payments to the Schwab-Kepner Company in excess of the good and valid collateral delivered to the extent of about twenty five thousand dollars.

Q. And that is what you meant when you testified on your direct examination today that Mr. Dockendorff said that as a result of that cable his collateral had been injured to the extent of twenty five thousand dollars?

A. Yes sir.

Q. You said in answer to Mr. Wolf's questions 2072
that the first thing that Mr. Dockendorff said was when he discovered the effect of these figures, that Mr. Kepner would have to see his creditors, or lay the situation before his creditors?

A. Yes sir.

Q. Your recollection is clear about that?

A. I think those were almost the identical words, after the first expression of surprise.

Q. What was his first expression of surprise?

A. I think just "My God," or something of that sort.

Q. Then what next did he say?

A. Then he said "You will have to see your 2073
creditors," or "You will have to meet your creditors," something to that effect.

Q. Did he suggest any way by which he could meet the creditors?

A. No.

Q. Or how the creditors should be handled?

A. Not in my hearing.

Q. Or what should be done with the general creditors?

A. Not as I recall.

2074 Q. Was any suggestion made by Mr. Kepner at that interview as to his consulting his attorney?

Mr. Wolf: I do not understand that question. As to who should consult his attorney?

Mr. Cohen: Mr. Kepner.

Mr. Wolf: Consult whose attorney, Mr. Kepner's attorney?

A. I don't recall it, I think not, but I won't swear that he did not.

Q. You won't say that the final conclusion of the conference was that Kepner said, "Well, I
2075 will go and see my attorney and talk the situation over with him and then make up my mind what I will do?"

A. I was not present at the conclusion of the conference between Mr. Dockendorf and Mr. Kepner.

Q. Did you meet Mr. Kepner on the same day?

A. I waited for Mr. Kepner in the outer office.

Q. You left before the interview was complete?

A. I went out of the room because it seemed to me a hopeless interview and it had been round and round the table until there was nothing more to be said as far as I could see.

2076 Q. And at least one of the parties was so excited he was not very clear as to what he was saying, was he?

A. I won't say he was so excited that he didn't know what he said, but he was very excited.

Q. Had you ever seen him in just that condition of mind before?

A. No.

Q. Now, you said that after the Friday conversation with Mr. Dockendorf you worked on Friday night and Saturday and Sunday getting at the figures, and these sheets, Respondent's

Exhibits 301 and 302 are part of the result of your labor? 2077

A. That is correct, sir. Of course, I don't want you to understand I had nothing else to do during that time. The office had to be taken care of.

Q. During that time, did you take any inventory, any actual physical inventory of the merchandise?

A. No, sir. I think if you will look at that it says, "Approximated," does it not?

Q. Yes. In your examination, Mr. Williams, you referred to the diary of the Schwab-Kepner Company showing maturing obligations. Was there such a book kept? 2078

A. There was.

Q. Did that book show from day to day the maturing obligations?

A. It did.

Q. Did you have access to that book?

A. I did.

Q. Did Kepner, to your knowledge, take into account his maturing obligations in obtaining money from Mr. Dockendorf?

A. He had to, he was compelled to.

Q. Did he from time to time in that connection communicate to Mr. Dockendorf the maturing obligations which he expected to meet with the money he was getting from Dockendorf? 2079

A. I believe so.

Q. Now, you spoke in explaining your answer to Mr. Wolf's questions with regard to notes that were given, or rather in arranging for the postponement of indebtedness, that on one or two instances Mr. Kepner arranged to postpone a payment of an indebtedness in a particularly heavy week so it would extend over to a lighter week?

A. I don't know I used the words, "one or two

2080 instances." I don't know how many instances; I said there were some instances in which such things were done.

Q. And that was done because of the fact the maturing obligations were not arranged so that they matured with some reference to the amounts that the Schwab-Kepner Company would get in with which to meet their maturing obligations?

A. No, sir, they were arranged with reference to what they might bill up, therefore get advantage of Mr. Dockendorff, of what they could in their receipts, and show Mr. Dockendorff the receipts which sprang from sales.

2081 Q. What you mean is this. You said in answer to Mr. Wolf's question, you gave an illustration "Suppose the diary showed that he so managed his purchases and shipments that a very considerable amount fell due in one week and then the next week or two weeks afterwards the maturing obligations were much less, his intention was merely to shift those falling due in one week to another week when the obligations were lighter, as might have been done in the first place with a little forethought?"

Q. Just what do you mean by your last expression, "that might have been done in the first place
2082 with a little forethought?"

A. If I billed certain goods, or delivered them, I might say to them at that time,—I would say to them I wanted them to date the bill ten days or hold the shipment ten days, what might be necessary, in order that I would not be stricken with a larger load in the matter of a few days than I could carry.

Q. And as far as you know Kepner had no difficulty in making that readjustment of his maturing obligations?

A. So far as I am aware.

Q. And so far as you know up to the time of the failure all of the notes which Kepner gave for maturing obligations were met at maturity? 2083

A. With the exception of the blowout at the time the check kiting came to its climax.

Q. Up to that time everything had gone along nicely so far as the notes were concerned?

A. Yes, sir, and even after that notes were paid.

Q. Now, in answer to questions concerning the general amount of business that was to be done, you said to Mr. Dockendorff on one occasion that if they were to increase their business the accommodation which they had would be insufficient for their requirements? 2084

A. Yes, sir.

Q. Accomodation with whom do you mean?

A. I meant that the total amount of advance or debit balance of money which Mr. Dockendorff might have against them.

Q. Would be insufficient?

A. Would be insufficient to carry them if they were to increase their business materially.

Q. In other words, if they were to increase their business materially they would get beyond what Mr. Dockendorff could advance them?

A. Yes.

Q. And on the other hand, their requirements for doing so large a business would be greater? 2085

A. Yes.

Q. Was that the subject of conversation on more than one occasion?

A. It may have been, I don't know.

Q. But you recall distinctly one occasion when that did occur?

A. Yes.

Q. And that was at a time when Kepner spoke of increasing the volume of his business?

A. Yes.

2086 Q. And your understanding was that because of increasing in such volume it would be beyond what Mr. Dockendorff could advance to meet such an increase that Mr. Dockendorff was dissuading Mr. Kepner from doing it?

A. He made the statement. I took it for granted that that stopped it. That is to say there was a certain limit beyond which Mr. Dockendorff was not prepared to go. He did not state any figures, what that was, but they could not get their advance from Mr. Dockendorff in a materially larger sum, of necessity, meaning they could not carry on a materially larger business.

2087 Q. Can you fix the time when that conversation occurred?

A. Only just as I have fixed some other times.

Q. What is your best recollection as to when that conversation occurred?

A. I think in September.

Q. In September?

A. I would say somewhere between the first and the fifteenth of September.

Q. And you cannot give us any recollection as to the increase of the volume of business that then was the subject of conversation?

A. No figures were mentioned.

2088 Q. But you are clear in your recollection that Dockendorff warned Kepner that if he were to increase the volume of his business, as suggested by Kepner, it would reach beyond the accommodation that Dockendorff could give him?

Mr. Wolf: I object to that as not being a fair statement of what the witness has testified to. The witness has testified that if the increase went beyond a certain point that would be so.

Objection overruled.

A. Bearing in mind that my understanding of

the case was that when they spoke of the figures it was a material and not an immaterial increase, yes. 2089

Q. When did you first become aware that bills were invoiced to customers that represented no sales whatever to those customers?

Mr. Wolf: The witness has not testified he ever became aware of it.

Mr. Cohen: He said he learned it at the receivership.

Mr. Wolf: I do not think that evidence is competent.

After discussion.

Objection overruled. 2090

A. It was while I was in the employ of the Receivers and going daily, or almost daily, to Elizabeth. I think about the end of December.

Q. Prior to that time had you received any information that sales invoiced to customers were other than *bona fide* sales?

A. I answered that this morning by saying that I understood they were *bona fide* sales, with one qualification.

Q. That qualification was that Kepner had the privilege of selling the goods at a higher price if he could sell them before the customers?

A. That's correct. 2091

Q. And you understood that except for the exercise of that privilege the obligation on the part of the customer was fixed and certain to pay for the goods?

A. There was no question whatever.

Q. Do you recall being present at any time in Mr. Dockendorff's office when Mr. Kepner was present and the subject of certain invoices to Ferguson, McKinney & Company came up?

A. Yes.

2092 Q. Do you recall that it was a few days prior to Mr. Dockendorff's departure?

A. No, it was more than a few days.

Q. How long before?

A. Oh, I should think a month.

Q. Do you recall that Mr. Dockendorff asked certain questions with regard to the Wynne Ferguson sales?

A. Yes.

Q. And do you recall that Mr. Kepner called Mr. Ferguson up on the telephone?

A. I do; the calling on the telephone did not arise out of the question of the Wynne Ferguson
2093 sales. Shall I explain?

Q. Yes.

Mr Wolf: What question is there on the record that is not answered?

The Referee: None.

Mr. Cohen: Yes, there is, the witness asked whether he should explain, and counsel said yes.

The Referee: The question is what occurred.

Q. What occurred?

2094 Mr. Wolf: I object to it as hearsay, incompetent, irrelevant and not binding on the Trustee.

The Referee: Objection overruled.

He is testifying to a transaction when he and Mr. Dockendorff and Mr. Kepner were present and Mr. Kepner went to the telephone.

Mr. Wolf: He cannot testify to what Mr. Ferguson said.

Mr. Cohen: I am not going to ask him.

Witness: The sales slip came in the name of Brown, Norton & Company—

Mr. Wolf: I move to strike that out 2095
because the sales slip is the best evidence.

The Referee: Let him complete his answer.

Witness: A firm which was at that time not known to me. The address given was 350 Broadway and I sent over and inquired at the Bradstreet Agency, and they did not know them, the name, at least, was what the messenger reported to me. He also reported that he had gone across to 350 Broadway, the Bradstreet office being at 346 Broadway and the elevator man told him that there was no such concern as Brown, 2096
Norton & Company there. I looked in the telephone book and got a directory and asked one or two dealers whom I thought would know Brown-Norton if they had been in the market, and these people said they did not know them, and thereupon I went down to Mr. Dockendorff's office, but before going to Dockendorff's office I took the sales slip to Mr. Kepner, or he came to me, I don't know which, and he said to me with a rather mysterious air, "This is really a sale to Wynne Ferguson," and he said "The Wynne Ferguson account is full." 2097
I had not told him the Wynne Ferguson account was full although I had checked him for all I wanted to but I didn't communicate that to Mr. Kepner. But the whole air of it I did not like so I telephoned down to Mr. Dockendorff's office; I was going down there, and I met him and explained the facts. Mr. Kepner was summoned and came down and when I said that I had been unable to find Brown-Norton & Company he laughed and said "That is

2098 impossible," and he called up Wynne Ferguson on the 'phone, and I give you what Mr. Kepner said. He said Brown-Norton & Company were not at 350 Broadway; he said 320 I think. Then Mr. Kepner repeated his answer, I don't know whether word for word, to Mr. Dockendorff and myself, and Mr. Ferguson said if it was not satisfactory to charge it to Brown-Norton & Company we could charge it to Ferguson, McKinney & Co. I did not like the air of these things. I could not see why there should be so much mystery if it was a
2099 plain business transaction, and I was very much dissatisfied, and as a result of it a day or two afterwards, I sent in a letter tendering my resignation and giving my reason for it.

Mr. Wolf: What date was this?

Witness: It was I should say fully a month before Mr. Dockendorff sailed.

Mr. Wolf: I move to strike out the answer as hearsay, incompetent, immaterial and irrelevant and not calling for the best evidence.

The answer was so long, so involved, that
2100 I am not able to pick out the portions which should not stand. I ask, therefore, that the entire answer be stricken out.

Mr. Cohen: I think that your Honor can reserve decision until the next hearing, and in the meantime, if necessary, the evidence can be stricken out.

The Referee: The Referee will reserve ruling on the motion.

Q. Mr. Williams, in that conversation, did Mr. Kepner state to Mr. Dockendorff in your presence

that those sales were *bona fide* and legitimate sales? 2101

A. The sale that was made, yes.

Q. Now, did you subsequently discover while you were working for the Trustee or the Receiver any papers or documents bearing upon the legitimacy of the Ferguson-McKinney sales?

Mr. Wolf: I object to that, you are going into new matter, and as to that matter the witness is Mr. Cohen's witness.

The Referee: How is this cross examination?

Mr. Cohen: I am willing to make the witness my witness at this point. 2102

Mr. Wolf: Then I think the proper method would be to call Mr. Williams in rebuttal.

Referee: Objection overruled, Mr. Cohen, making the witness his own witness on this point.

Q. (Last question read.)

A. I found some bills which bear all the evidence—

Mr. Wolf: Answer yes or no.

Witness: In my judgment yes, they did.

Mr. Wolf: You did find the documents? 2103

Witness: That in my judgment had some bearing.

Q. Have you these documents here?

A. I have.

Mr. Cohen: I ask they be marked for identification.

Mr. Wolf: I object to that. If they will offer them in evidence—

Mr. Cohen: The offer is accepted and they are now offered in evidence.

2104 Mr. Wolf: Do you want the bills?

Mr. Cohen: I want all the documents that have any bearing upon that transaction.

Witness: These documents are just as I found them. They are fastened together with clips in precisely the same shape as when I first saw them.

Q. Where did you find them?

A. They originally came out of a waste paper basket packed in burlap which had been sent to the warehouse by the Receivers, and taken out of
2105 the warehouse under the direction of the Trustee.

The Referee: The papers are received in evidence and marked Exhibit P361 to P360 inclusive.

Q. Do you know where they were before they got into this waste basket?

A. I only had the statement of the young man who packed them as to a statement made to me when they were unpacked as to what the basket contained.

Q. You did not see them in any other place, before you saw them?

2106 A. I have no recollection of seeing them.

Q. Who was this young man?

A. Frederick Heene.

Q. Is he still working for the Receiver?

A. Oh, no. I expect him to come and do some work with me to-night for two or three hours.

Q. Do you know his address?

A. 502 East 83rd Street; his business telephone address is Franklin 166. I did not ask the name of the firm by whom he is employed now.

Adjourned until Wednesday, March 15th, 1911, at ten thirty o'clock in the forenoon.

Exhibit P301.

2107

500 extra at 7c 80 76 9 were shipped extra—he took 200 pcs. extra already.

Exhibit P302.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7863 New York, Nov. 25, 1910

(49)

as Dec. 15th

Sold to Mr. D. O. Tatum, 239 Church St. City

Terms Net 10 days Order No. 2141 2108
Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs	Style or Qual	Lot No	Description	Yards	Price	Amt.	Total
10	500	80 76 40"	9 00	Valley Falls	2984 8/2	7¼	2164 01	2164 01
≡1952	50				3121 4/4			
1953	50				3043			
1954	50				2943 1/4			
1955	50				3064 1/4			
1956	50				2863 3/4			
1957	50				2883 3/4			
1958	50				2959 1/4			
1959	50				2898 3/4			
1960	50				3066 1/4			2109
1948	50				3005			

S. O.
≡2141 Ordered Newburgh Bleachery

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2110

Exhibit P303.

THE SCHWAB-KEPNER COMPANY

Dry Goods Commission Merchants

66, 68 & 70 Leonard Street

Invoice No. 6968 New York, Oct. 26, 1910

(O)

Sold to Mr. D. O. Tatum, 239 Church St. City

Terms Net 10 priv. 60x with int. Order No. 1859

Payable in New York funds Discount at the rate of 6% per annum only.

2111

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
9	450	80 80 40"	9.00	Valley Falls	2737 2/4	7 1/4	1984 49	1984 49
=457	50				3113			
458	50				3005 1/4			
459	50				2946 3/4			
460	50				3182 1/2			
461	50	warehouse			3016 1/4			
462	50	(in pencil)			2933 1/4			
463	50				3032			
464	50				3065 1/2			
465	50				3077 3/4			
		Chg. =2611						

B. B. 661 (in pencil) Credited 11 26 10 (in ink)

N. A. Claim No. 1319

2112

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P304 reads as follows: 211

Exhibit P304.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6964 New York, Oct. 26, 1910

Sold to Mr. D. O. Tatum, 239 Church St. City

Terms Net 10, priv. 60x with int. Order No. 1861
Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
		88/80, 40" 10.50		Totokett				2114
≡2346	50				30288½	7½	2267 36	2267 36
2421	50				30435/8			
2508	50				30243/4			
2461	50				30174/8			
2145	50				29999/8			
2211	50	Warehouse			29885/8			
1893	50	(in pencil)			30241/2			
1860	50				30241/2			
2380	50				30485/8			
1928	50				3000			
					3010			
		Chs. ≡2610						

Credited 11 2% 10
Claim No. 1320

B. B. 664
N. A. (in pencil) 2115

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2116 Exhibit P305 reads as follows:

Exhibit P305.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6505 New York, Sept. 28, 1910

(O.)

Sold to Mr. D. O. Tatum, 239 Church St. City

Terms Net 10, priv. 60x with int. Order No. 1575
Payable in New York funds Discount at the rate of 6% per annum only.

2117

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
33	1650	80 80 40"	9 00	Valley Falls	100469	7¼	7284 00	7284 00
=450	50				3084			
451	50				30363/4			
452	50				30983/4			
453	50				30511/2			
454	50	(In pencil)			30951/2			
455	50	Credited Tatum			29631/4			
447	50	10 11 10			30471/4			
448	50				3070			
449	50				30991/2			
417	50	bale 417 credited 10 27 10			2948			
418	50	(In pencil)			31281/2			
419	50				2987			
420	50				31423/4			
421	50				3027			
422	50	(In pencil)			3076			
423	50	Credited 10/28			29611/4			
424	50				30961/2			
425	50				29913/4			
426	50				30281/4			
427	50	(In pencil)			31221/4			
428	50	SB342			29241/2			
429	50				31103/4			
430	50	(In pencil)			2880			
431	50	Not credited			2945			
432	50	42535½ at 7¼			3040			
433	50	83083.83			29833/4			
434	50				2943			
435	50	(In ink)			3060			
436	50	11/26/10			3081			
437	50	Credited Baler			3128			
438	50	=427 447 inclusive			30801/2			
439	50	Claire No. 4361						

2118

Exhibit P306 reads as follows:

Exhibit P306.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7539 New York, Oct. 29, 1910 No. 1

(O)

Sold to Mr. D. O. Tatum, 239 Church St. City

Terms Net 10, priv. 60x with int. Order No. 1920
Payable in New York funds Discount at the rate of 6% per annum only.

Cases 20	Pcs. 1000	Style or Qual. 64 60	Lot No.	Description	Yards	Price	Amt.	Total
		381 2"	5.35	Seaconnet	5821 81/4	5	2910 91	2910 91
±369	50				2923 1/4			
370	50				2913			
371	50				2912 3/4			
372	50				2904 3/4			
373	50	(In pencil)			2952			
374	50	SB 346			2886 3/4			
375	50	S 815			2825 3/4			
376	50				2919 3/4			
377	50				2949 1/2			
378	50				2882 3/4			
379	50				2921 3/4			
380	50				2898 1/4			
381	50				2949 1/4			
382	50				2882			
383	50				2980			
384	50				2927 1/4			
385	50				2877			
386	50				2904			
387	50				2902 1/4			
388	50				2907 1/2			

Chg. ±2628. Release enclosed
(In ink) Credited 11/26/10 Claim No. 1322

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from

2122 Exhibit P307 reads as follows:

Exhibit P307.

Oct. 29, 1910

Sayles Bleachery,
Saylesville, R. O.,

Dear Sirs:

Kindly hold to the order of D. O. Tatum, bales No. 369 388, 64 60 38½" 5.35 shipped to you for our account by Seaconnet Mills, covered by lot No. 81346, & oblige,

Very truly yours,
The Schwab Kepner Co.

2123 R B W

Exhibit P308 reads as follows:

Exhibit P308.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6884 New York, Oct. 24, 1910

(O)

Sold to Mr. D. O. Tatum, 239 Church St. City

Terms Net 10, priv. 60x with int. Order No. 1826
2124 Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
2	100	72 68 40"	9.50	Parker	6303¼	6½	393 95	393 95
#472	50				3101			
473	50				3202¼			

Chg. #2582 Release enclosed
Lot 8659 (in pencil)
Credited 11 26 10 Claim No. 1323 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P309 reads as follows: 2125

Exhibit P309.

Oct. 24, 1910

Standard Bleachery,
Carlton Hill, N. J.

Dear Sirs:

Kindly hold to the order of D. O. Tatum, bales 8472 473, 72 68, 40" 9.50 shipped to you for our account by the Parker Mills, covered by lot No. 8659.

Very truly yours,
The Schwab Kepner Co.

B B W

2126

Exhibit P310 reads as follows:

Exhibit P310.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street #1

Invoice No. 6918 New York, Oct. 25, 1910

(O)

Sold to Mr. D. O. Tatum, 239 Church St. City
Terms Net 10, priv. 60x with int. Order No. 1826
Payable in New York funds Discount at the rate of 6% per annum only. 2127

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
2	100	72 68, 40"	9.50	Lincoln	6267	6¼	391 69	391 69
#456	50				3118¼			
457	50				3148¾			

Chg. #2585 Release enclosed (in pencil)
Credited 11 26 10
Warehouse BB659 (in pencil) Claim No. 1324 (in ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods

2128 Exhibit P311 reads as follows:

Exhibit P311.

Oct. 25, 1910

Lincoln Mfg. Co.,
Fall River, Mass.

Dear Sirs:

Kindly hold to the order of D. O. Tatum, 239 Church St., New York, bales Nos. 456 457, 72 68, 40" 9.50 which you are holding for our account & oblige,

Very truly yours,
The Schwab Kepner Co.

2129 B B W

Exhibit P312 reads as follows:

Exhibit P312.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7578 New York, Nov. 1, 1910

Sold to Mr. D. O. Tatum, 239 Church St. City
Terms Net 10 priv. 60x with int. Order No. 1952

2130

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
10c	500	76/72 40"	9.00		298131/4	7	2086 93	2086 93
#65	50				29623/4			
66	50				29841/4			
67	50				29851/4			
68	50	C 1586			29793/4			
69	50	S 165			29771/4			
70	50	(In pencil)			29923/4			
72	50				29763/4			
73	50				29673/4			
74	50				30181/4			
75	50	Chg #2644			29683/4			

Release enclosed
Credited 11/26/10
Claim No. 1325 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P313 reads as follows:

Exhibit P313.

THE SCHWAB-KEPNER COMPANY #1
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7557 New York, Oct. 31, 1910

(O)

Sold to Mr. D. O. Tatum, 239 Church St. City
Terms Net 10, priv. 60x with int. Order No. 1939
Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
26	1040	64 64 38½"	5.15	Wilson & B (In pencil)	57677	6	2882 85	2882 85
≠2321	20	D.C.						
2322	20	"			2234			
2323	20	"						
2318	40	S.C.			2291			
2324	40	"			2330			
2325	20	D.C.		(In pencil)	2171			
2326	20	"		On way to Salys	2231			
2328	20	"		Lot SB363	2313			
2329	20	"			2269			
2330	20	"			2182			
2331	20	"		Credited 11/26/10	2373			
2332	20	"		Claim No. 1326	2366			
2333	40	S.C.		(In ink)	2273			
2334	20	D.C.			2184			
2335	20	"			2130			
2336	20	"			2160			
2337	20	"			2273			
2342	20	"			2164			
2343	20	"			2188			
2344	40	S.C.			2183			
2345	20	D.C.			2156			
2346	20	"			2193			
2347	20	"			2253			
2339	40	S.C.			2091			
2348	40	"			2283			
2338	20	"			2170			
					2079			
	Chg.	≠2635		Release enclosed	2137			

Memo
Copy sent Wynne (In pencil)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from

2134 Exhibit P314 reads as follows:

Exhibit P314.

Oct. 31, 1910

Messrs. Wilson & Bradbury,
93 Franklin St., City.

Dear Sirs:

Kindly hold to the order of D. O. Tatum, bales Nos. 2321 2326, 2318, 2328 2339, 2342 2348, 64 64, 38½" 535 which you are holding for our account & oblige,

Very truly yours,

The Schwab Kepner Co.

2135 B B W

Exhibit P315 reads as follows:

Exhibit P315.

No. 1

THE SCHWAB KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6885 New York, Oct. 24, 1910

(O)

Sold to Mr. D. O. Tatum, 239 Church St. City

Terms Net 10, priv. 60x with int. Order No. 1826
2136 Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
2	100	72 68 40"	9 50	Lincoln	6440½	6¼	402 53	402 53
#462	50				3223			
463	50				3217½			

Chg. 2581 Release enclosed
Lot C 1579 (In pencil)
Credited 11 26 10
Claim No. 1327 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P316 reads as follows: 2137

Exhibit P316.

Oct. 24, 1910

Cold Spring Bleachery,
Yardley, Pa.

Dear Sirs:

Kindly hold to the order D. O. Tatum, bales Nos. 462 463, 72 68, 40" 9.50 shipped to you for our account by the Parker Mills, covered by our lot No. C1579.

Very truly yours,

The Schwab Kepner Co. 2138

B B W

2139

2140 Exhibit P317 reads as follows:

Exhibit P317.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7537 New York, Oct. 29, 1910

(O)

Sold to Mr. D. O. Tatum, 239 Church St. City

Terms Net 10, priv. 60x with int. Order No. 1918
Payable in New York funds Discount at the rate
2141 of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
20	1000	64 60, 38½"	5 35	Seaconnet	58317	5	2915 85	2915 85
#389	50				2901¼			
390	50				2930¾			
391	50				2909			
392	50				2922¾			
393	50				2996			
394	50				2860			
395	50	Lot P420			2966½			
396	50	S 605			2965¼			
397	50	(In pencil)			2927¾			
398	50				2833¼			
399	50				2833			
2142 400	50				2914¾			
401	50				2913¼			
402	50				2926			
403	50				2900¼			
404	50				2948¾			
405	50				2923			
406	50	Credited 11/25/10			2906½			
407	50	Claim No. 1328			2906¾			
408	50	(In ink)			2931¾			
	Chg.	#2627 Release enclosed						

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P318 reads as follows: 2143

Exhibit P318.

Oct. 29, 1910.

Providence D. B. & C. Co.,
Providence, R. I.

Dear Sirs:

Kindly hold to the order D. O. Tatum, bales Nos. 389 408, 64 60 38½" 5.35 shipped to you for our account by Seaconnet Mills, covered by lot No. P420.

Very truly yours,

The Schwab-Kepner Co. 2144

B B W

2145

2146 Exhibit P319 reads as follows:

Exhibit P319.

THE SCHWARZKOPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 3341 New York, Oct. 29, 1910

(49)

Sold to Ferguson McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1923
Payable in New York funds. Discount at the rate
2147 of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
10	5	64 60 28½"	5.25	Granite	2520	5	1260 20	1260 20
#601	5				2537			
602	5				2531			
603	5				2511			
604	5	(In pencil)			2529			
605	5	C1582			2529			
606	5	8 5x5			2521			
607	5				2503			
608	5				2537			
609	5				2521			
610	5				2485			

Chg. #2630 Release enclosed
2148 Credited 11/26/10
Claim No. 1289 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P320 reads as follows:

Exhibit P320.

THE SCHWABEKEPNER COMPANY
Dry Goods Commission Merchants
65, 68 & 70 Leonard Street

Invoice No. 7542 New York, Oct. 29, 1910

(69)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1923
Payable in New York funds. Discount at the rate of 6% per annum only.

Cases	Pcs	Style or Equal	Lot No.	Description	Yards	Price	Amt.	Total
10	50m	63 60 36½" 5.25		Granite	2520	5	1260 80	1260 80
2591	5o				2537			
592	5o				2541			
593	5o				2543			
594	5o				2519			
595	5o				2508			
596	5o	(In pencil)			2491			
597	5o	C1581			2535			
598	5o	8 605			2506			
599	5o				2519			
600	5o				2517			

Cha 22631 Release enclosed
Credited 11 26 10
Claim No. 1290 (In ink)

2151

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2152 Exhibit P321 reads as follows:

Exhibit P321.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7584 New York, Nov. 1, 1910
O

Sold to Ferguson McKinney D.G. Co. St. Louis, Mo.

Terms Net 10, priv. 50xx with int. Order No. 1957
Payable in New York funds Discount at the rate
of 6% per annum only.

2153

Cases	Pcs.	Style or Qual	Lot No	Description	Yards	Price	Amt.	Total
14	539	64/52	3811/2"	5.75	32380½	4¾	1538 07	1538 07
33					2394			
34					24221/4			
35					23963/4			
36					24233/4			
43					2413			
44				On pencil: C1568 s 815	23763/4			
45					24301/4			
46					23853/4			
47					2396			
48					23503/4			
51					24321/2			
52					11621/2			
2154 49					2417			
50					2379			

Chg. 2648 Release enclosed
Credited 11 26 10
Claim No. 1291 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit [illegible] to be filed as follows:

Exhibit P222.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
65, 68 & 70 Leonard Street

Invoice No. 7579 New York, Nov. 1, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60X with int. Order No. 1856
Payable in New York funds. Discount at the rate of 6% per annum only.

Cases	Pcs	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
25	Imp. 64 60 38½			3.50	3447½	5	2323 60	2323 60
2302	40				2951			
304	40				2952			
305	40				2956			
306	40				2951			
307	40				2950½			
308	40				2956			
309	40				2950½			
310	40				2951½			
311	40				2951½			
312	40				2952½			
313	40	(In pencil)			2950½			
314	40	SH 342			2952½			
315	40	0/815			2952½			
316	40				2951			
317	40				2950½			
318	40				2951½			
319	40				2952½			
320	40				2952½			
321	40				2950½			
322	40				2956			
323	40				2951½			
324	40				2956			
325	40				2950½			
326	40				2950½			
327	40				2952½			

[illegible] 2643 Release endorsed
Credited 11 26 10
Invoice No. 1292 (In ink)

Goods are at purchasers risk when shipped, or when at purchasers request, held for shipment. No claim [illegible]

2158 Exhibit P323 reads as follows:

Exhibit P323.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7580 New York, Nov. 1, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1955
Payable in New York funds Discount at the rate
2159 of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
18	698	64/69 38½"		5.35	41695¾	5	2084 79	2084 79
±3	40				2404½			
4	40				2398½			
5	40				2390¾			
6	40				2402¾			
7	40				2383½			
8	40				2395½			
9	40				2387¼			
10	40				2373¾			
11	40	(In pencil)			2382			
12	40	SB332			2390¼			
13	40	s/815			2391¾			
2160 14	40				2375¼			
15	40				2398¾			
16	40				2397¾			
17	40				2378¾			
18	40				2398¼			
0	40				2377¾			
20	18				1068¾			

Chg. ±2646 Release enclosed
Credited 11/26/10
Claim No. 1293 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P324 reads as follows:

Exhibit P324.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6942 New York, Oct. 26, 1910

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10 priv. 60x with int. Order No. 1851
Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
#71	50	96, 92, 40"	7.50	Parker	3017	8½	256 45	256 45

Chg. #2603 Release enclosed
Lot SB360 (In pencil)
Credited 11/26/10 Claim No. 1294 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2164 Exhibit P325 reads as follows:

Exhibit P325.

Oct. 26, 1910

Parker Mills,
Fall River, Mass.

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney St. Louis, Mo., bales Nos. 71, 96 92, 40" 7.50 which you are holding for our account, & oblige,

Very truly yours,
The Schwab Kepner Co.

2165 B B W

2166

Exhibit P326 reads as follows: 2167

Exhibit P326.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6913 New York, Oct. 25, 1910

(O)

Sold to Ferguson McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1836
Payable in New York funds Discount at the rate of 6% per annum only. 2168

Cases	Pcs.	Style or Qual	Lot No.	Description	Yards	Price	Amt.	Total
7	350	72/100, 34"	6.75	Hargraves	2096$31/4$	$7\frac{1}{2}$	1572 24	1572 24
=604	50	(In pencil)			$2991\frac{5}{4}$			
605	50	Lots 8580-608 & 611			$2986\frac{3}{4}$			
606	50				$3020\frac{3}{4}$			
607	50				2974			
608	50				$2986\frac{1}{4}$			
596	50				$3012\frac{1}{2}$			
597	50				$2991\frac{3}{4}$			

Chg. =2594 Release enclosed
Credited 11/26/10
Claim No. 1295 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut. 2169

2170 Exhibit P327 reads as follows:

Exhibit P327.

Oct. 25, 1910

Standard Bleachery,
Carlton Hill, N. J.

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney D. G. Co., St. Louis, Mo., bales Nos. 604 608 inclusive, 596 597, 72/100, 34" 6.75 shipped to you for our account by Hargraves Mills, covered by our lots Nos. S 580, 608, 611.

2171

Very truly yours,

The Schwab Kepner Co.

B B W

2172

Exhibit P328 reads as follows: 2173

Exhibit P328.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6847 New York, Oct. 21, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1802
Payable in New York funds Discount at the rate of 6% per annum only. 2174

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
17	850	72/68, 40"	9.50	Danielson	46564	6¼	2910 25	2910 25
±830	50				2723			
831	50				2741			
832	50				2733			
833	50				2678			
834	50	Lot P389 (In pencil)			2706			
835	50				2736			
836	50				2711			
837	50				2788			
838	50				2743			
839	50				2766			
840	50				2663			
841	50				2705			
842	50				2690			
843	50				2713			2175
844	50				2747			
845	50				2935			
857	50				2786			

Chg. ±2559 Release enclosed
Credited 11/26/10 Claim No. 1296 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2176 Exhibit P329 reads as follows:

Exhibit P329.

Oct. 21, 1910

Providence D. B. & C. Co.,
Providence, R. I.

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney D. G. Co., bales Nos. 830 845 inclusive and No. 857, 72 68, 40" 9.50 shipped to you for our account by the Danielson Cotton Co., covered by our lot No. P389.

2177

Very truly yours,

The Schwab Kepner Co.

B B W

2178

Exhibit P330 reads as follows: 217

Exhibit P330.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7577 New York, Nov. 1, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1948
Payable in New York funds Discount at the rate of 6% per annum only. 2180

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
20	1000	64/60	38½"	5.35 Granite	50173	5	2508 65	2508 65
≠631	50				2506			
632	50				2517			
633	50				2463			
634	50				2523			
635	50				2482			
636	50				2510			
637	50				2515			
638	50		Lot SB362 (In pencil)		2537			
639	50				2527			
640	50				2495			
641	50				2514			
642	50				2505			
643	50				2491			2181
644	50				2521			
645	50				2501			
646	50				2496			
647	50				2540			
648	50				2529			
649	50				2522			
650	50				2479			

Chg. ≠2643 Release enclosed
Credited 11/26/10 Claim No. 1297 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2182 Exhibit P331 reads as follows:

Exhibit P331.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7513 New York, Oct. 29, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1906
Payable in New York funds Discount at the rate
2183 of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt	Total
5	200	64/56, 38½"	5.50	Hunter	1111½	4¾	542 05	542 05
=547	50				2313			
548	50				2248			
552	50	C1584 (In pencil)			2399¾			
553	50				2267½			
554	50				2183¼			

Chg. =2625 Release enclosed
Order to CS. (In pencil)
Credited 11/26/10 Claim No. 1298 (In ink)

Goods are at purchasers risk when shipped, also
when at purchasers request, held for shipment. No
2184 claim considered unless made within five days from
receipt of goods. No allowance made after goods
have been cut.

Exhibit P332 reads as follows:

Exhibit P332.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7528 New York, Oct. 29, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo. Terms Net 10, priv. 60x with int. Order No. 1909 Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
2	80	64/56 38½" 5.50		Hunter	4584½	4¾	217 76	217 76
#555	40	(In pencil)			2340½			
556	40	shpd. C. S.			2244			

S. O. #1909 Release enclosed
(In pencil) Lot C1591
Credited 11 26 10 Claim No. 1299 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2188 Exhibit P333 reads as follows:

Exhibit P333.

Oct. 29, 1940

Cold Springs Bleachery,
Yardley, Pa.

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney D. G. Co., St. Louis, Mo., the following bales:

No. 591 600 64 60 38½" 5.35 shipped by Granite lot C1581.

2189 No. 601 610 64 60 38½" 5.35 shipped by Granite, lot C1582.

No. 547 548, 552 554, 64 56 38½" 5.50 shipped by Hunter.

No. 555 556 64 56 38½" 5.50 shipped by Hunter, lot C1584.

Very truly yours,
The Schwab Kepner Co.

B B W

2190

Exhibit P334 reads as follows: 2191

Exhibit P334.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 2438 New York, Oct. 20, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, prox. 60x with int. Order No. 1787
Payable in New York funds Discount at the rate
of 6% per annum only. 2192

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
4	90	64/40, 28"	5.25	Harding Tilton	5621	8	449 68	449 68
#3016	25	2nds			1562¾			
3021	25	(In pencil)			1561½			
3023	20				1271			
3025	20				1225¾			

Chg. #2553 Release enclosed
Lot T 516 (In pencil)
Credited 11/26/10 Claim No. 1300 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut. 2193

2194 Exhibit P335 reads as follows:

Exhibit P335.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

No. 6847 New York, Oct. 20, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1788
2195 & 1789
Payable in New York funds Discount at the rate of 6% per annum only.

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Lot T517 (In pencil)

No. 100 5 64 40, 28" 5.25 Hargraves 308 sq (Sec.) 21.64. Balance as per Standard 64 40 28" 5.25 3619 sq Hargraves, 307.62 — 332.26.
2196 Lot T518.

Charges No. 2333 6 Releases enclosed
Credited 11 26 10
Claim No. 1301

Exhibit PERK made as follows: [illegible]

Exhibit PERK.

THE NORTHWARD KEEPER COMPANY
Dry Goods Commission Merchants
68, 69 & 70 Leonard Street

No. 6016. New York, Oct. 28, 1909

[illegible]

Sold to Ferguson Mercantile Co. of St. Louis, Mo.

Terms: 30 prox. 60% with [illegible] credit [illegible]
Payable in New York funds. Discount at the rate of 6% per annum only [illegible]

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claims considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Bal. 61 [illegible] 325 as per Statement
[illegible] 61 [illegible] 28 [illegible] 28

Charge No. 2018 Returns enclosed

Less 7½% [illegible] Charges [illegible]
Credited 11 28 28

[illegible]

Terms Net [illegible] [illegible]

2200 Exhibit P337 reads as follows:

Exhibit P337.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6812 New York, Oct. 20, 1910

(O)

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1785
Payable in New York funds Discount at the rate
2201 of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
#165	25	64 40, 28"	5/25		1454 3/4	8 1/2	123 65	123 65
		Charge #2552	Release enclosed					
Lot T363		(In pencil)	Harding Tilton (In pencil)					
		1sts.	Credited 11 26 10				Claim No. 1303	

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2202

Exhibit P338 reads as follows: 2203

Exhibit P338.

Oct. 20, 1910

Standard Bleachery,
Carlton Hill, N. J.,

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney D. G. Co., the following:

Bale No. 165, 64 40, 28" 5.25 shipped by Harding Tilton, covered by our lot No. T363.

Bal. of 64 40, 28" 5.25, lot No. T513 (21820 yards) 2204

Bales No. 3016, 3021, 3023, 3025, 64 40 5.25 shipped by Harding Tilton, cut lot No. T516.

Bale No. 100, 64 40 28" 5.25 shipped by Hargraves Mills, lot T517.

Balance of 64 40, 28" 5.25 lot T518 (3619 yards)

Very truly yours,

The Schwab Kepner Co.

B B W

2205

2206 Exhibit P339 reads as follows:

Exhibit P339.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6845 New York, Oct. 21, 1910

(O)

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo. Terms Net 10, priv. 60x with int. Order No. 1801 Payable in New York funds Discount at the rate of 6% per annum only.

2207

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
25	1000	64-64, 38½"	5.15		61237	5	3061 85	3061 85
≠51	40				2456			
52	40				2434			
53	40				2456			
54	40				2445			
55	40				2450			
56	40	(In pencil)			2471			
57	40	Wilson & Bradbury			2450			
58	40	Jno. M. Stone Cotton Mills.			2453			
59	40	B/L. dated 10/27/10			2454			
60	40	SB354			2467			
61	40	Lot C354			2412			
62	40				2450			
2208 63	40				2452			
64	40				2462			
65	40				2457			
66	40				2455			
67	40				2421			
68	40				2430			
69	40				2456			
70	40				2453			
71	40				2455			
72	40				2480			
73	40				2437			
74	40				2444			
75	40				2437			

Credited 11/26/10 Claim No. 1304 (In ink)
Charge ≠2558 Release enclosed

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No

Exhibit P340 reads as follows: 2209

Exhibit P340.

Oct 21, 1910

Cold Spring Bleachery,
Yardley, Pa.

Kindly hold to the order of Ferguson-McKinney D. G. Co., bales No. 51 75, inclusive, 64 64 38½" 5.15 which you are holding for our account, covered by lot No. C354, & oblige.

Very truly yours,
The Schwab Kemper Co.

B B W

2210

2211

2212 Exhibit P341 reads as follows:

Exhibit P341.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6773 New York, Oct. 19, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv 60x with int. Order No. 1762
Payable in New York funds Discount at the rate
2213 of 6% per annum only.

Cases	Pcs	Style or Qual	Lot No.	Description	Yards	Price	Amt.	Total
5	300	64 72 34"	6.50	Samoset	1817 43/4	7	1272 23	1272 23
#34700	50							
34701	50				2943 1/4			
34702	50				3068 3/4			
34703	50	(In pencil)			3058 1/4			
34704	50	At Standard			3025			
34705	50	Lot 8642			3058 1/2			
					3021 1/2			

Charge #2547 Release enclosed
Credited 11 26 10 Claim No. 1395 (In ink)

Goods are at purchasers' risk when shipped, also
2214 when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P342 reads as follows: 2215

Exhibit P342.

Oct. 19 1910

Standard Bleachery,
Carlton Hill, N. J.

Dear Sirs:

Kindly hold to the order of Ferguson McKinney D. G. Co., St. Louis, Mo., bales No. 34700 34705 inclusive. 64 72 34" 6.50 shipped to you for our account by the Samoset Mills, and covered by our lot No. 8642.

Very truly yours, 2216
The Schwab Kepner Co

B B W

2217

2218 Exhibit P343 reads as follows:

Exhibit P343.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6877 New York, Oct. 24, 1910

(O)

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo.
Terms Net 10, priv. 60x with int. Order No. 1824
Payable in New York funds Discount at the rate of 6% per annum only.

2219

Cases	Pcs	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
4	200	72 60, 38"	10 00	Berkshire	12989¼	5¾	695 13	695 13
#1	50				3079½			
2	50				2978			
3	50				2990½			
4	50				3041¼			

Charge #2377 Release enclosed
Lot C 1525 (in pencil)
Credited 11 26 10 Claim No. 1306 (in ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods
2220 have been cut.

Exhibit P344 reads as follows:

Exhibit P344.

THE SCHWABKEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6880 New York, Oct. 24, 1910

(O)

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo. Terms Net 10, priv. 60x with int. Order No. 1825 Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs	Style or Qual	Lot No	Description	Yards	Price	Amt	Total
2	100	72 68 40"	9.50	Parker	5982½	6¼	373 91	373 91
#810	50							
811	50				3014¾			
					2967¾			

Chg. #2580 Release enclosed
Lot C 1558 (in pencil)
Credited 11 26 10 (in ink) Claim No. 1307

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2224 Exhibit P345 reads as follows:

Exhibit P345.

THE SCHWAB KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street
Invoice No. 6879 New York, Oct. 24, 1910

(O.)

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo.

Terms Net 10, priv. 60X with int. Order No. 1825
Payable in New York funds Discount at the rate of 6% per annum only.

2225

Cases	Pcs	Style or Qual	Lot No	Description	Yards	Price	Amt.	Total
1	200	72, 68, 40	3, 50	Parker	11972	6¼	748 25	748 25
2806	50				2985¼			
807	50				3008			
808	50				2986			
809	50				2992¾			

Chg. 22579 Release enclosed
Lot C1509 (In pencil)
Credited 11 26 10 Claim No. 1308 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from
2226 receipt of goods. No allowance made after goods have been cut.

Exhibit P346 reads as follows: 2227

Exhibit P346.

Oct. 24, 1910

Cold Spring Bleachery,
Yardley, Pa.

Dear Sir:

Kindly hold to the order of Ferguson-McKinney D. G. Co., St. Louis, Mo., the following bales:

No. 806 809, 72 68, 40" 9.50 shipped to you for our account by the Parker Mills, covered by lot No. C1509.

Bales No. 11 72 60, 39" 10.00 shipped to you for 2228
our account by Berkshire Cotton Mfg. Co., covered by lot No. C1525.

Bales No. 810/811, 72 68 40" 9.50 shipped by Parker Mills, covered by lot No. C1558.

2229

230 Exhibit P347 reads as follows:

Exhibit P347.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street
Invoice No. 7583 New York, Nov. 1, 1910

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1988
Payable in New York funds Discount at the rate of 6% per annum only.

Pieces	Yes.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
8	4m	88/84 36"	9.25		254641/2	7	1782 52	1782 52
#2					31381/2			
2					31583/4			
4					3178			
4					31901/2			
2		81355			3148			
8		8.182			3176			
9		(In pencil)			32591/2			
					32151/4			

Chg. #2647 Release enclosed
Credited 11/26/10 Claim No. 1369 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P348 reads as follows:

Exhibit P348.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street
Invoice No. 6933 New York, Oct. 26, 1910

(O.)

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1855
Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
3	150	80-80, 40"	9.00	Valley Falls (In pencil)	917 9/4	7 1/4	665 53	665 53
#412	50				3012 1/2			
413	50	Lot C1540			2135 1/4			
414	50	(In pencil)			3032			
Chg. #2605 Release enclosed								
Credited 11/26/10 Claim No. 1310 (In ink)								

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2236 Exhibit P349 reads as follows:

Exhibit P349.

Oct 28, 1910

Cold Spring Bleachery,

Yardley, Pa.

Dear Sirs:

Kindly hold to the order of Ferguson McKinney D. G. Co., St. Louis, Mo., bales Nos. 412 414, 80 80 40" 9.00 shipped to you for our account by Valley Falls Co., covered by Inv. Nos. 67540.

2237 Very truly yours,

The Schwab Kepner Co.

H H W

2238

2242 Exhibit P351 reads as follows:

Exhibit P351.

Oct. 26, 1910

Providence D. B. & C. Co.,
Providence, R. I.

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney D. G. Co., St. Louis, Mo., bales No. 406 407 80 80, 40" 9.00 shipped to you for our account by Valley Falls Co., covered by our lot No. P399.

Very truly yours,

2243 The Schwab Kepner Co.

B B W

2244

Exhibit P352 reads as follows: 2245

Exhibit P352.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6934 New York, Oct. 26, 1910

(O)

Sold to Ferguson McKinney D.G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1854
Payable in New York funds Discount at the rate of 6% per annum only. 2246

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
3	150	80 72 40"	6 80	Osborn	895 1/4	6 1/4	559 39	559 39
=369	50	Lot P 401			2955 1/4			
370	50	(In pencil)			2984 1/4			
371	50				3010 3/4			

Chg. =2604 Release enclosed
Credited 11 26 10 Claim No 1312 (In ink)

Goods are at purchasers risk when shipped also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut. 2247

2248 Exhibit P353 reads as follows:

Exhibit P353.

Oct. 26, 1910.

Providence D. B. & C. Co.,
Providence, R. I.

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney D. G. Co., St. Louis, Mo., bales No. 369 371, 80 72 40" 6.80, shipped to you for our account by the Osborn Mills, covered by our lot No. P401.

Very truly yours,

2249 The Schwab Kepner Co.

B B W

2250

Exhibit P354 reads as follows: 2251

Exhibit P354.

THE SCHWAB-KEPNER COMPANY #1
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 6864 New York, Oct. 22, 1910

(O)

Sold to Ferguson-McKinney D. G. Co. St. Louis, Mo.

Terms Net 10, priv. 60x with int. Order No. 1813
Payable in New York funds Discount at the rate of 6% per annum only. 2252

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
4	200	72 60, 39	10,400	Berkshire	1229 3/4	58¾	706 98	706 98
#5	50				308 1/4			
6	50				308 1/4			
7	50				308 1/2			
8	50				308 1/4			

Chg. #2564 Release enclosed
Lot 1398 (In pencil)
Credited 11 26 10 Claim No. 1313 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut. 2253

2254 Exhibit P355 reads as follows:

Exhibit P355.

Oct. 22, 1910

Providence D. B. & C. Co.,
Providence, R. I.

Dear Sirs:

Kindly hold to the order of Ferguson-Mckinney D. G. Co., St. Louis, Mo., bales No. 5 8 inclusive 72 60. 39" 10.00 shipped to you for our account by Berkshire Cotton Mfg. Co., covered by our lot No. P398.

2255

Very truly yours,
The Schwab Kepner Co.

B B W

Exhibit P356 reads as follows:

Exhibit P356.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7001 New York, Oct. 27, 1910

2256

(O)

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo.

Terms Net 10 priv. 60x with int. Order No. 1874
Payable in New York funds Discount at the rate of 6% per annum only.

Cases	Pcs.	Style or Qual	Lot No	Description	Yards	Price	Amt.	Total
37	1110	56/52, 40"	5.85		93975	4½	4228 88	4228 88
#1604	30				2591			
1605	30				2523			
1606	30				2521¾			
1607	30				2563¼			
1608	30				2561½			
1609	30				2492			
1610	30				2531¼			
1611	30				2555½			
1612	30				2507¾			
1613	30				2564½			
1614	30				2541			
1615	30				2537			
1616	30				2489¾			
1617	30				2538			
1618	30				2537½			
1619	30				2536¾			
1620	30				2555¾			
1621	30				2493¼			
1622	30				2515¾			
1623	30				2519			
1624	30				2526¼			
1625	30				2568¾			
1626	30				2567			
1627	30				2549½			
1628	30				2522½			
1629	30				2576			
1630	30				2573½			
1631	30				2543½			
1632	30				2509¼			
1633	30				2559½			
1634	30				2491			
1635	30				2615¼			
1636	30				2529¾			
1637	30				2567¾			
1638	30				2528¾			
1639	30				2505			
1640	30				2567			

2257

2258

2259

Lot C1585 (In pencil)
Credited 11/26/10 Claim No. 1314 (In ink)
Chg. #2614 Release enclosed

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2260 Exhibit P357 reads as follows:

Exhibit P357.

Oct. 27, 1910

Cold Srings Bleachery,
Yardley, Pa.

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney D. G. Co., St. Louis, Mo., bales No. 1601 1640, 56 52 46" 5,85, which you are holding for our account, covered by lot No. C1585.

Very truly yours,

2261 The Schwab Kepner Co.

B R W

Original mailed

(In pencil)

Cold Spring 11 9 10

2262

Exhibit P358 reads as follows: 2263

Exhibit P358.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7563 New York, Oct. 31, 1910

(O)

Sold to Ferguson McKinney D.G. Co. St. Louis, Mo.

Terms Net 10, priv. 60X with int. Order No. 1942
Payable in New York funds Discount at the rate of 6% per annum only. 2264

Cases	Pcs	Style or Qual	Lot No	Description	Yards	Price	Amt	Total
15	600	64 60 $38\frac{1}{2}$"	5.35		3.761	53/8	1653 40	1653 40
=338	40				$2017\frac{3}{4}$			
339	40				$2067\frac{1}{2}$			
340	40				2046			
341	40				$2053\frac{3}{4}$			
342	40	Lot P424			$2067\frac{1}{4}$			
343	40	8-115 (In pencil)			2072			
344	40				$2043\frac{1}{2}$			
345	40				$2072\frac{1}{4}$			
346	40				$2054\frac{1}{4}$			
347	40				2068			
348	40				$2069\frac{3}{4}$			
349	40				2041			
350	40				$2028\frac{1}{2}$			2265
351	40				$2030\frac{3}{4}$			
352	40				$2018\frac{3}{4}$			

Chg. =2637 Release enclosed
Credited 11 26 10 Claim No 1316 (In ink)

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

2266 Exhibit P359 reads as follows:

Exhibit P359.

THE SCHWAB-KEPNER COMPANY
Dry Goods Commission Merchants
66, 68 & 70 Leonard Street

Invoice No. 7562 New York, Oct. 31, 1910
(OO)

Sold to Ferguson-McKinney D.G. Co. St. Louis, Mo.

Terms Net 10, priv. 60X with int. Order No. 1941
Payable in New York funds Discount at the rate of 6% per annum only.

2267

Cases	Pcs.	Style or Qual.	Lot No.	Description	Yards	Price	Amt.	Total
10	400	64 60 $38\frac{1}{2}$		5.35	20537	$5\frac{3}{8}$	1103 86	1103 86
≠328	40				$2058\frac{1}{2}$			
329	40				$2043\frac{3}{4}$			
330	40				$2049\frac{1}{2}$			
331	40				$2048\frac{3}{4}$			
332	40	Lot P119			$2032\frac{1}{2}$			
333	40	≠116 (In pencil)			$2067\frac{1}{2}$			
334	40				$2081\frac{1}{4}$			
335	40				2062			
336	40				$2059\frac{1}{4}$			
337	40				2034			

Chg. ≠2636 Release enclosed
Credited 11 26 10 Claim No. 1315 (In ink)

2268

Goods are at purchasers risk when shipped, also when at purchasers request, held for shipment. No claim considered unless made within five days from receipt of goods. No allowance made after goods have been cut.

Exhibit P360 reads asfollows: 2269

Exhibit P360.

Oct. 31, 1910

Providence D. G. & C. Co.,
Providence, R. I.

Dear Sirs:

Kindly hold to the order of Ferguson-McKinney D. G. Co., St. Louis, Mo., bales No. 328 337 inclusive, 64 60 38½" 5.35, which you are holding for our account covered by lot No. P419, and bales No. 338 352 inclusive, 64 60 38½" 5.35 covered by our lot No. P421. 2270

Very truly yours,
The Schwab Kepner Co.

B B W

2271

Vol. II.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 544.

ARTHUR GREEY, AS TRUSTEE IN BANKRUPTCY OF SCHWAB-KEPNER COMPANY, BANKRUPT,
APPELLANT,

vs.

JOHN E. DOCKENDORFF.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED MAY 7, 1913.

(23,676)

2278 "There was no question whatever in my mind about that."

Mr. Wolf: I move to strike out the answer because what is in Mr. Williams' mind is not binding on the Trustee; it is not material, relevant or competent in this controversy because Mr. Williams was the agent, representative and employee of Mr. Dockendorff.

The Referee: The answer being responsive to the question and the question not having been objected to, I think your motion
2279 comes too late. Motion denied.

Mr. Wolf: I move to strike out the answer on the ground the question calls for testimony that is incompetent, immaterial, irrelevant and a conclusion of the witness which is not binding or controlling on the Trustee, for the reason already assigned, and I also move to strike out the question and answer appearing on page 66 of the record.

After argument.

The Referee: There having been no objection to the question at the time the ques-
2280 tion was put, this motion to strike out is denied.

Mr. Wolf: I object on the ground that the questions elicited this morning—in the hearing on Monday—and the questions elicited this morning are not proper questions. I am not referring particularly to the one question asked on page 66 of the record, but I am referring particularly to the questions that were asked and the answers that were elicited at the hearing held this morning, which I consider to be improper evidence

The Referee: I have already ruled on it and I see no occasion to change my ruling. 2281

Q. Referring to the documents that you produced at the last hearing, Exhibits 1301 to 360, when you found these documents as you have testified, packed up in a waste paper basket, whom did you first speak to concerning the matter?

Mr. Wolf: Will you fix the date?

Mr. Cohen: I will in a moment. Let us have that answer.

A. I will have to think a moment on that, Mr. Cohen: I am unable to state positively whether I first mentioned it to the Trustee or to Mr. Dockendorff. 2282

Q. But you did mention it to the Trustee?

A. I did.

Q. When?

A. Well, in point of time, almost immediately after they were found; I don't mean within a few minutes,—the next opportunity I had of conversation with him.

Q. What is your best recollection as to the time when that occurred?

A. That basket was not unpacked for considerable time after it was taken out of the warehouse. I hesitate to fix the date; I unfortunately did not make a memorandum of it. 2283

Q. With reference to the present date, approximately how long ago was it,—your best recollection?

A. It may possibly have been a month ago.

Q. Did you have more than one interview with the Trustee with regard to it?

A. I spoke to the Trustee —

Mr. Wolf: You can answer that yes or no.

Witness: Yes.

2284 Q. Did you have any interview with the Trustee when any other people were present?

A. Yes, I think the subject was brought up at a meeting between Mr. Greey, the Trustee, Mr. Dockendorff and myself; that is my best recollection.

Q. Was there any interview at which Mr. Kepner was present?

A. No, sir.

Q. Was there any interview at which Mr. Wolf was present?

A. Yes, I think there was.

Q. Now, will you please state what you said to the Trustee and what the Trustee and his counsel said with reference to these documents?

2285

Mr. Wolf: I object to that as incompetent, irrelevant and immaterial and not binding on any party to this transaction, or any parties in this litigation, because the transactions took place after the litigation was commenced.

Mr. Cohen: Any admissions by the Trustee, if made on the witness stand here subsequent to the proceedings or any admissions—

The Referee: Is the object to show admissions by the Trustee?

2286

Mr. Cohen: Yes, sir.

The Referee: Objection overruled.

Mr. Wolf: Objected to also on the ground that counsel cannot inquire as to conversations that passed between the Trustee and his counsel, on the ground it is privileged.

Mr. Cohen: The record already shows that Mr. Williams was present.

Mr. Wolf: And the record shows that Mr. Williams was the employee of Mr. Greey at that time and the authorities are clear on the proposition that conversations be-

tween lawyer and client, even where the agent of the client is present, are absolutely privileged. 2287

The Referee: If there is any privilege to a conference between a Trustee and his attorney, it seems to me the privilege is raised by a third person being present, even if the third person is an employee.

Mr. Wolf: I found two cases in the Federal Courts to the contrary on that.

The Referee: Our rule in New Jersey is thoroughly settled.

Mr. Wolf: I had the matter before Judge Holt in the Federal Court here and he decided in that way. 2288

The Referee: What was said to the Trustee certainly was not privileged whether it was said in the presence of counsel or not. This question does not call anyway for a confidential communication made by a client to his attorney. It calls for a statement made by the witness to his employer, the Trustee.

Mr. Wolf: In the presence of counsel?

The Referee: In the presence of counsel. The objection is overruled.

Mr. Wolf: You limit the question to that extent? 2289

The Referee: No, I do not intend to limit it. It only occurred to me that possibly the question of confidential communication was not going to enter into it anyway. In other words that there may not have been any communication from the Trustee to his attorney. The communication may have been barred by this witness. It does not seem to me the question of privilege can enter

2290 into it any way. Unless you want to present authorities—

Mr. Wolf: I would be glad to do it. I have the authorities in my office and I would be glad to call them to your Honor's attention. That is the way Judge Holt ruled in the Federal Court.

Mr. Cohen: Does counsel now contend that Mr. Williams is the agent and employee of the Trustee, so as to apply his rule of privilege to this situation? Do I so understand?

2291 Mr. Wolf: I made the claim that the conversation between Mr. Greey and myself at that interview was privileged.

Mr. Cohen: I know you did, but that does not answer the specific question I just asked.

Mr. Wolf: I have no hesitation in answering any question you ask.

Mr. Cohen: Because you have already contended, apparently, you and your associate in this proceeding, that Mr. Williams was not the representative of the Trustee; that he was the representative of Mr. Dockendorff, and if you intend to change your 2292 position upon that score I think we are entitled to know it.

Mr. Wolf: I am not going to change my position, because the facts will not permit me to change any position. The facts in this case control the positions and nobody I have ever heard of has tried to shift positions except in the imagination of Mr. Cohen.

The fact is that prior to the receivership Mr. Williams was the undoubted employee of Mr. Dockendorff and subsequent to that

time he occupied a dual relationship of em- 2293
ployment. He was employed by the Trustee and by Mr. Dockendorff also. He was employed by the Trustee for the purpose of collecting the accounts which he and Dockendorff jointly claim, and by both parties, in order to facilitate the collection of these accounts, and for the joint advantage of the Trustee and Mr. Dockendorff, depending upon which would eventually be successful in this litigation.

The Referee: This is his present employment.

Mr. Wolf: This is his present employ- 2294
ment; he is employed by the Trustee for the joint benefit of the Trustee and himself—

The Referee: For the joint benefit of Mr. Dockendorff and the Trustee.

Mr. Wolf: Yes, for the purpose of assisting the Trustee in the collection of the outstanding accounts. His salary is being paid out of the outstanding accounts he collects, and if Mr. Dockendorff is successful in this litigation he will have paid the salary of Mr. Williams. On the other hand, if the Trustee is successful, the Trustee will have paid his salary out of the assigned accounts 2295
which will be determined to have been vested in the Trustee.

The Referee: Under these circumstances it does not seem to me that Mr. Williams' relation to the Trustee can be of so confidential a nature as to justify the interposition of the claim of privilege with relation to this conversation that the question is directed to. The objection is overruled.

Q. (Last question read as follows: "Now, will

2296 you please state what you said to the Trustee and what the Trustee and his counsel said with reference to these documents?")

A. I first explained how the documents came into my possession; where they had been found, and I explained the nature of the documents as I understood them.

Q. What did you say upon that score?

Mr. Wolf: Objected to as incompetent, irrelevant and immaterial and not binding upon anybody; that the documents themselves show what they are, and anything

2297 Mr. Williams may have said either to the Trustee or to his counsel does not change the effect or control the legal effect of those documents.

The Referee: This testimony is as to what the conversation was.

Mr. Wolf: As to the effect of the documents.

The Referee: Objection overruled.

Q. (Last question read.)

A. I explained that these documents bore every earmark of being the original bills which in the ordinary course of business should have been trans-

2298 mitted to the purchasers of the goods, or the apparent purchasers of the goods.

Mr. Wolf: I move to strike that out.

The Referee: Motion denied.

Mr. Wolf: I understand that Mr. Cohen is making Mr. Williams his witness.

The Referee: Yes.

Q. Go ahead, Mr. Williams.

A. I also drew attention to the carbon copies of what purported to be releases of the merchandise. I am not sure whether I stated at that

time that I had been unable to find the originals 2299
or not.

Mr. Wolf: I move to strike that out, then.

Mr. Cohen: That is consented to.

Q. What carbon copies do you refer to? Can you refer to them by the exhibit number?

A. Do you want me to recite all the numbers marked on them?

Q. Are they all of one color?

A. Yes.

Q. What color are they?

A. These are the yellow slips attached. 2300

Q. And they are the yellow sheets that are carbon copies of the letters addressed to the bleacheries?

A. Yes, sir, addressed to bleacheries, to some bleacheries and to some mills.

Q. Now, proceed with your statement of the entire conversation, Mr. Williams.

Mr. Wolf: You are referring to the same conversation?

Mr. Cohen: Yes, sir.

A. This brought up a reference to the conversation which had passed between the Trustee and 2301
myself and between the Trustee and, as I understood it, Mr. D. O. Tatum, or his representative and a representative of the Ferguson McKinney Dry Goods Company.

Q. What was said in that conversation upon that score?

A. That the finding of those documents would appear to us—The fact that the statements made by D. O. Tatum and the Ferguson McKinney Dry Goods Company, or their representatives as to their entire lack of knowledge of the transactions were correct.

2302 By the Referee:

Q. Who made that statement?

A. This had been talked about between the Trustee and myself on a previous occasion, and it was recited again at the time of this interview.

Q. Who recited it?

A. I believe both Mr. Greey and myself took part in making that statement.

Mr. Wolf: I move to strike out the answer for the reasons already given and also for the reason it does not appear to have been a statement of Mr. Greey; that
2303 Mr. Greey and the Trustee and the creditors are not bound by any statement made by Mr. Williams.

The Referee: As to the first ground, the motion is denied. As to the other grounds, it does not seem the statement is

Mr. Cohen: May I be permitted to examine the witness further? This is not a new experience with this witness.

The Referee: I will reserve ruling on it

Q. Now, Mr. Williams, will you please give us your best recollection; what you said to Mr. Greey and what Mr. Greey said to you?

2304 A. There is no use trying to recite words, I cannot.

Q. I do not ask you to recite the words. All I ask you is to give me your best recollection of the substance or content of what you said and what Mr. Greey said, separating so far as you can what you said to him and what he said to you. Put yourself back as far as you can, as best you can, into that conversation again and try to—

A. Do you want me to begin from the beginning?

Q. Yes. 2305

Mr. Wolf: Before you do I want to make the same objection, that it is irrelevant, immaterial and incompetent and subject to the same claim of privilege I have heretofore related.

Objection overruled.

A. I will do the best I can.

Q. That is all we ask, sir. Just imagine that you are reporting it to the Referee the day after it occurred.

A. My recollection is that I began the conversation by saying that I would take advantage of 2306
Mr. Wolf's presence to bring this matter up, and I produced the documents, and I explained how they came into my possession—where they had been found. I explained that the basket in which they had been packed had been in room 503, 115 Broadway for some time intact, without being unpacked. After unpacking it I put all the material, the whole thing just as it stood in the basket, into a large drawer, an empty drawer or file. And, having occasion thereafter to make a search of that drawer, I discovered these documents which I have in front of me. I explained what they appeared to be to me—the original 2307
bills which, in the ordinary course of business, should have been sent to the purchasers, or the apparent purchasers of the merchandise. I am really unable to separate what followed immediately, to distinguish what may have been said by Mr. Gresey and what may have been said by me.

Mr. Wolf: I move to strike out the answer.

Mr. Cohen: I am still following on the refreshing of the witness' recollection.

2308 Mr. Wolf: I move to strike out the answer on the grounds heretofore assigned, and on the ground it now appears that the conversations that had been held were privileged.

Mr. Williams testified that he took advantage of my presence as the attorney for the Trustee to bring this matter to the attention of the Trustee and myself.

And I also move to strike out on the ground it is incompetent, immaterial and irrelevant and not binding on the creditors.

The Referee: Motion denied.

2309 Q. Do you recall that Mr. Wolf asked you any questions in that interview?

A. I cannot recall that he did, Mr. Cohen. He may have.

Q. Do you recall that Mr. Greey asked you any questions concerning it?

A. I don't think he did. I had already reported to Mr. Greey before.

Q. Do you recall that any reference was made to any previous interview between the Trustee and Mr. Kepner concerning this transaction?

2310 Mr. Wolf: I object to that for the same reasons, and on the ground it is leading and that the memory of the witness has not been exhausted, and anything that may have been said between Mr. Kepner and Mr. Williams, Mr. Kepner and the Trustee, is certainly not binding on the creditors.

Mr. Cohen: That can be answered yes or no.

The Referee: It is a question of whether you have exhausted his recollection; he has

not been asked whether he has stated all 2311
he can recollect.

Question withdrawn.

Q. Have you so far stated all you recollect of the conversation, at the moment, Mr. Williams?

A. All that I am able to distinguish and to place in the mouths of the respective parties present.

Q. Do you recall whether or not there was any reference made to any previous conversation between Mr. Kepner and the Trustee?

A. I think there was.

Q. And do you recall who made that reference?

2312

Mr. Wolf: I object to that. Let the witness state what was said and by whom. Is not that a conclusion? Let him state who said something and what was said and then we can tell who made the reference.

Objection overruled.

Q. (Last question read.)

A. Yes, Mr. Greey made the reference.

Q. Now, what did Mr. Greey say with regard to that?

Mr. Wolf: I object to that as being in- 2313
competent, immaterial and irrelevant and calling for hearsay testimony.

Objection overruled.

Mr. Wolf: And the testimony is not binding on the creditors. I think this is very similar to the situation we had on Monday when I asked Mr. Williams what Kepner said to him and that was not allowed to go in. Now, we are having testimony of what Greey told Williams Mr. Kepner told Mr. Greey.

Objection overruled.

2314 A. I am stating only my best recollection.

Q. That is all the law requires you to do.

A. That Mr. Greey stated that he assumed that those were transactions which Mr. Kepner had told him that credits had been issued but not placed on the books.

Mr. Wolf: I move to strike out the previous answers of the witness and this answer of the witness as not having been properly connected so as to make it material, relevant and competent.

The Referee: Motion denied.

2315 Q. What did you say when Mr. Greey said that to you?

Mr. Wolf: Same objection.

A. In effect I replied that undoubtedly these were the same things—these documents and the matters referred to by Mr. Kepner were one and the same transactions.

Q. What else was said with regard to the subject of credits passed on the books, either by you or Mr. Greey?

Mr. Wolf: I object to that, in addition
2316 to the grounds already alleged, that the books are the best evidence.

The Referee: Objection overruled.

A. Credits not passed on the books, you mean?

Q. Yes, sir; credits not passed on the books.

Mr. Wolf: Then I withdraw my objection.

Q. (Question read as follows: "What else was said with regard to the subject of credits not passed on the books, either by you or Mr. Greey?")

A. I said that credits which referred to these items, or to some of them, had been handed to me

after the receivership, as I believed, several days after the appointment of the Receiver. 2317

Q. By whom?

A. Either had been handed to me or tendered to me. I want to correct that. I want to state positively, tendered to me.

Q. By whom?

A. By Mr. Corbett, who had been the Treasurer of the Company and I had declined to receive them on the ground that Mr. Corbett had no authority to issue and I had no authority to recognize them.

Q. What did Mr. Greey say to that?

A. I don't know that any comment was made. If he did, it was merely affirmative, that he agreed with me. 2318

Mr. Wolf: I move to strike that out, "if he did, it was affirmative."

The Referee: Yes, that will be stricken out.

Q. What, if anything, did Mr. Greey say to you concerning the *bona fides* of these transactions that you were presenting documents about?

A. I do not think that anything was said by Mr. Greey at that time. If there was, I don't recall it.

Q. What, if anything, did Mr. Wolf say with regard to it? 2319

A. I do not think Mr. Wolf made any comment on that standpoint.

Q. What, if anything, did Mr. Wolf say with regard to the duty of Mr. Kepner towards Mr. Dockendorff with regard to these transactions?

A. I am afraid I will have to ask you to explain that; it is not clear to me.

Q. Did Mr. Wolf make any comment upon Mr. Kepner's conduct?

2320 A. That is a different question. There is a distinction. Yes.

Q. What did he say?

Mr. Wolf: Objected to on the grounds before urged and on the ground of privilege.

The Referee: Objection overruled.

A. He made a statement somewhat to this effect, that he was not greatly surprised, in view of the testimony which he had learned here at these hearings.

Q. What else did he say?

A. I think that comprised it; there may have
2321 been more words used, but that was the substance of it.

Q. Now, did this conversation take place before Mr. Kepner was called as a witness in these proceedings, before he was called the last time by Mr. Wolf?

A. If you will tell me when he was called the last time—

Mr. Wolf: Let him fix the time of the conversation and then you fix the time.

Q. Mr. Williams, do you recall anything else that was said at this conversation?

2322 A. Nothing, unless you can give me some clue to what you desire to bring out. I don't recall anything further.

Q. Do you recall Mr. Greey said anything about this being a perfectly rotten transaction on the part of Kepner?

Mr. Wolf: I object to that as leading.

Mr. Cohen: I think I have exhausted the witness' recollection.

The Referee: I think so; objection overruled.

A. I don't think he used those words at that

time; those words were used by him at another time. 2323

Mr. Wolf: I move to strike that out.

The Referee: It will be stricken out.

Q. Did Mr. Greey, at any other time, have any conversation with you concerning these matters?

A. There was a conversation between Mr. Dockendorff, Mr. Greey and myself.

Q. And was it at that interview that Mr. Greey expressed some opinion with regard to Kepner's conduct?

A. He made a remark somewhat in the line you speak of; in the words you used.

Q. What were those words? 2324

A. Just what you have recited; "a perfectly rotten transaction;" I won't swear those were the exact words, but substantially so.

Q. On whose part?

A. On the part of Mr. Kepner.

Q. Did Mr. Greey, at either this interview at which Mr. Dockendorff was present, or at the interview at which Mr. Wolf was present, say that was a matter that did not concern the Truster, but was a matter between Mr. Dockendorff and Mr. Kepner?

A. I don't think Mr. Greey said so.

Q. Did Mr. Wolf say, either in words or substance, it was a matter of indifference to him as to how it affected Mr. Dockendorff? 2325

A. I have no recollection of Mr. Wolf making any such remark at any time.

Q. Do you recall any comment that Mr. Wolf made upon the transaction at that interview?

A. I have stated my best recollection upon that point.

Q. And that was—

A. Mr. Wolf said, in view of what he had heard at these hearings, he was not greatly surprised.

2326 Q. Was that the full extent of all that Mr. Wolf said at that time?

A. You will have to let me think more

Q. I wish you would.

A. There is nothing to fix these things in my mind, and you pin me down to a particular conversation on a particular day, and I am not prepared to answer it. I think, but I won't swear positively.

Mr. Wolf: Unless you are ready to swear.

Mr. Cohen: "I think" means, "My best
2327 recollection is?" It is not an expression of imagination at all.

The Referee: Answer the question.

Witness: I decline to put myself on record positively, of a particular conversation of a particular time, when I may perhaps be wrong,—when I may have heard that at some other time.

I have every desire to assist this investigation to the best of my ability, but I decline to swear positively to a thing unless it is absolutely certain in my mind. I think I am justified in that position. I do not
2328 think I should be forced to make a positive statement as to a day or time when it is not absolutely certain.

The Referee: Nobody is attempting to force you, Mr. Williams. You are asked to state your best recollection.

Witness: I have begun in that way.

Q. (Previous question read as follows: "Was that the full extent of all that Mr. Wolf said at that time?")

Mr. Cohen: I think you will cure some of the difficulties you have if you will en-

deavor to give your best recollection; in- 2329
stead of using the expression "I think," which might mean just imagination instead of your best recollection, you would use the expression "My best recollection is."

Witness: I will endeavor to do so. That is what I mean. I mean just what you said; I will use those words.

My recollection is that Mr. Wolf made a remark to the effect that he presumed that to be a matter which would be taken up between Mr. Dockendorff and Mr. Kepner.

Mr. Wolf: Now, Mr. Referee, I move to strike out the testimony that has been taken 2330
on which you reserved decision, for the reason that what the Trustee has said is no proof whatever of the fact. I have not very clearly in mind the direct point towards which these exhibits are directed, not the direct point toward which this evidence, or this line of evidence is directed.

After argument.

My motion is a renewal of the motion on which I understood your Honor reserved decision.

The Referee: I reserved decision as to whether a certain answer be stricken out. 2331

Mr. Wolf: I now move that that answer be stricken out, and the entire line of testimony be stricken out.

The Referee: I won't strike out the entire line, but I should like to hear the answer read again.

(The previous testimony referred to was read, as follows: "This brought up a reference to the conversation which had passed between the Trustee and myself and between the Trustee and, as I understood it,

2332 Mr. D. O. Tatum, or his representative and a representative of the Ferguson McKinney Dry Goods Company. Q. What was said in that conversation upon that score? A. That the finding of those documents would appear to us The fact that the statements made by D. O. Tatum and the Ferguson McKinney Dry Goods Company, or their representatives as to their entire lack of knowledge of the transactions were correct."

The Referee: It will be stricken out.

2333 Q. Mr. Williams, these accounts that we have been examining you about, against D. O. Tatum and Ferguson McKinney were part of the accounts receivable assigned to Mr. Dockendorff, were they not?

A. Yes.

Q. Did you, prior to these conversations with the Trustee and prior to the discovery of these documents, make any effort to collect those accounts receivable from D. O. Tatum and Ferguson McKinney & Company?

A. Statements were sent both to D. O. Tatum and Ferguson McKinney Dry Goods Company and
2334 were mailed on the 17th of December, if not that day, they may have been mailed on the 18th by the Receivers, or me for the Receivers, to the respective parties with a request that they would confirm the correctness of them.

Q. Did you receive any reply from them?

A. From D. O. Tatum in writing, and a lot in words.

Q. What were the statements you received in words?

Mr. Wolf: I object to that as hearsay

Mr. Cohen: I shall connect it.

I ask it be held open until I ask some 2335
preliminary questions.

The Referee: Ruling reserved.

Q. Did you subsequently report to the Trustee what efforts you had made to collect the Ferguson McKinney and Tatum accounts?

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant, unless counsel is willing to call the Referee's attention or the attention of counsel to the materiality of the continuation of this line of testimony.

I do not know of any specific feature of the litigation respecting which this is mat- 2336
erial.

The Referee: What is the object of it?

Mr. Cohen: There are several lines of inquiry before you on which this has a material bearing. It has a material bearing upon Mr. Dockendorff's own good faith. It has a material bearing upon the relationship between Dockendorff and Kapner.

In the examination yesterday of Mr. Dockendorff, counsel indicated a certain line of inquiry that we shall undoubtedly be obliged to contest. He asked Mr. Docken- 2337
dorff, among other things

Mr. Wolf: That is not in evidence here, is it?

Mr. Cohen: We have a right to assume that the examination of Mr. Dockendorff, as has been stated by counsel, was made in good faith, for the purpose of enabling him to prepare his case, and since this witness is now upon the witness stand and I have been permitted to examine him as my own witness, it seems to me that in anticipation

2338 of these claims, I may be permitted to put my evidence in.

After argument.

The Referee: I suppose they are entitled to show the whole transaction. I do not know what the other question will be.

Objection overruled.

Q. (Question read as follows: "Did you subsequently report to the Trustee what efforts you had made to collect the Ferguson McKinney and Tatum accounts?") Subsequently to the sending out of the statements to them as you have testified to.

2339 A. Oh, yes, I think the matter came up at the time of the discussion at which Mr. Wolf was present.

Q. Prior to that time had you learned from Mr. Greey that Mr. Greey knew these were not *bona fide* accounts?

Mr. Wolf: I object to that as calling for a conclusion of the witness and not calling for a conversation, and as leading.

Objection sustained.

Q. Prior to that time did you have any conversation with Mr. Greey concerning the validity of

2340 these accounts?

A. Shortly after the appointment of the Trustee; the first Saturday after I had gotten,—I think it was the first Saturday after his appointment; if not the first, it was the second Saturday, Mr. Greey and his partner Mr. Tatum were in the office, in the Trustee's office.

The Referee: And his partner Mr. Tatum?

Witness: Not Mr. D. O. Tatum. That is a brother. And we went over the accounts there, the three of us, because Mr. Tatum acts as credit man for his firm of Tatum,

Pinkham & Greey, of which Mr. Greey is a brother, and Mr. Tatum stated then that his brother knew nothing of these transactions. 2341

Mr. Wolf: I move to strike that out as hearsay, incompetent, immaterial and irrelevant.

The Referee: I suppose it is admissible as showing the knowledge which the Trustee acquired.

Mr. Wolf: Suppose a conductor of a street car told him this was not a *bona fide* account.

The Referee: I will strike that out. I think we are going pretty far when we take testimony of this sort for this purpose. 2342

Q. Mr. Williams, do you know when Mr. Dockendorff first learned that these accounts were not *bona fide* accounts?

Mr. Wolf: I object to that.

The Referee: Yes or no. What is the objection?

Mr. Wolf: The objection is that the witness cannot know. He can know when he told Mr. Dockendorff, but he cannot testify whether or not Mr. Dockendorff knew it before then or not. That is something for Mr. Dockendorff to say. 2343

The Referee: I don't see how he can know.

Mr. Cohen: Except upon the theory that Mr. Williams stood in the shoes of Mr Dockendorff and it was his duty to communicate the fact.

The Referee: Objection sustained.

Q. What is your knowledge, Mr. Williams, as to when Mr. Dockendorff's attention was first

2344 called to the fact that these accounts were not *bona fide* accounts?

A. As far as my knowledge goes, and my recollection, I communicated that information to him over the 'phone very shortly—it may have been a day; it may have been less than a day, and it may have been two days after I discovered the documents.

Q. But it was after the bankruptcy proceedings had begun?

A. Yes.

Q. Sometime afterwards?

A. Yes.

2345

The Referee: How long was it before your conversation with the Trustee and Mr. Wolf, which you fixed at about a month ago?

Mr. Wolf: He has not said it was before.

The Referee: When was it with reference to your conversation with the Trustee and Mr. Wolf, which you fixed at about a month ago? Was it before or after that?

Witness: That I communicated with Mr. Beckendorff? Immediately before.

The Referee: What do you mean by

2346 immediately before?

Witness: A day or two days.

Q. Now, before that time had you had any conversation with Mr. Givey, the Trustee, as to the validity or invalidity of these accounts?

A. Merely the incidental what came up incidentally when we went over the whole list of accounts, with Mr. Givey and his partner, Mr. Tarum, and myself.

Q. Now, had you any knowledge prior to that conversation that these accounts were other than *bona fide* accounts?

A. I had received notice from Tatum that they 2347
did not owe anything, without any further explanation, as I recall it.

Q. And that was after these bankruptcy proceedings had begun?

A. When were these proceedings begun?

Q. Last November.

Mr. Wolf: December first, about.

A. Oh, you mean after the receivership?

Q. Yes.

A. Yes, unquestionably.

Q. So you had no knowledge or information whatever until after the receivership that these 2348
accounts were other than *bona fide* accounts?

A. Not the slightest.

Q. Did you know of any knowledge or information of any kind or character that was communicated to Mr. Deckendorff before the receivership that these accounts were other than *bona fide* accounts?

A. I did not.

Q. Do you know of any understanding or agreement between Mr. Deckendorff and Mr. Kepner that Mr. Kepner was to have a right to create accounts of this character, without validity, or obligation on the part of the purchaser and to 2349
secure money from Mr. Deckendorff?

A. I have no knowledge whatever.

Mr. Wolf: I object to that as leading.

Objection overruled.

Witness: I have no knowledge whatever of that character.

Q. Then so far as you know, while you were at the Schwab-Kepner Company, Mr. Deckendorff believed that the accounts against D. O. Tatum and Ferguson, McKinney & Company were *bona fide* and valid accounts?

2350 Mr. Wolf: Objected to.

Objection sustained.

Mr. Cohen: Will you produce the original of the letter of which this is a copy (handing paper to Mr. Wolf), a letter to Mr. Grey as Trustee, from Mr. Dockendorff, under date of February 25th?

Mr. Wolf: Is there any answer from you to this letter?

Mr. Cohen: I don't know, but, I want the original here.

Mr. Wolf: You can use the copy subject to correction.

2351 Paper last referred to marked "P401 for identification, March 15, 1911."

At this point a recess was taken until two o'clock in the afternoon.

After Recess.

CYRUS WILLIAMS, resumed the stand.

Further cross examination by Mr. Cohen:

Q. Mr. Williams, at pages 31, 32 and 33 of the minutes of the last examination, while you were 2352 being examined by counsel for the Trustee, you testified that when this thing, referring to the kiting of checks, had run up to somewhere between five and ten thousand dollars, "as my recollection is, I went to Mr. Dockendorff's office for the express purpose of reporting it." At page 33 you endeavored to fix the time with reference to the sailing of Mr. Dockendorff. You said it was some three weeks before he sailed, about three weeks before he sailed. Have you any clearer recollection of that today, as to the time?

A. I brought something with me that I think may help out on that. (Referring to paper.) To

my very best ability I would fix the date as being 2353
about the first of October. I won't swear that is the date.

Q. And your best recollection is that this kiting had run up at that time between five and ten thousand dollars?

A. That is what I stated at the time. I was speaking from memory then; I had nothing to refer to. I was stating the facts as I remembered them at that time. I had nothing to refer to.

Q. Did you carry the figures in mind from day to day at that time, of the amount of the kiting?

A. Oh, in substance, yes, approximately.

By the Referee: 2354

Q. You say you were stating from memory. When were you stating from memory?

A. The previous examination.

By Mr. Cohen:

Q. Now, when you said this thing had run up to somewhere between five and ten thousand dollars, did you mean that you had followed it closely enough to know it had greatly increased?

A. I did not, sir.

Q. So that is a sudden jump in the amount?

A. No, I meant then and I mean now that what 2355
had been an occasional resort seemed to have become apparently an intended continuance. It looked as if it might be.

Q. Had you ever, in your conversations with Mr. Kepner, approved of this practice of kiting checks?

A. No, sir, most emphatically no.

Q. Had you ever told him Mr. Dockendorff approved of it?

A. No, sir, most emphatically no.

Q. Did you protest against it?

A. Yes.

2356 Q. Repeatedly?

Mr. Wolf: To whom?

Mr. Cohen: To Kepner?

A. Yes.

Q. More than once?

A. You mean by "protest" to express in some manner disapproval?

Q. Yes, that is what I mean.

A. Yes.

Q. Expressing in some manner disapproval, a desire it should be discontinued?

A. I did.

2357 Q. And this reached a point along about the time

A. Let me correct that, Mr. Cohen. You say "desire it should be discontinued."

Q. I mean a desire on the part of your principal it should be stopped, as expressed by you as his representative.

Mr. Wolf: I object to that.

A. I expressed disapproval and I expressed also fear that they would get to where it was beyond their control.

Q. What if anything did you say in that regard?

2358 A. I picked up a big square glass weight, as it laid on Kepner's desk one day, and I said "You have got this standing on its point and it is bound to fall, and somebody will get hurt." That is the very expression I used.

Q. When did that occur, Mr. Williams?

A. I cannot fix any exact date; it was after I had, in less vigorous words, mentioned it before.

Q. Mr. Williams, did that amount ever reach as much as fifty thousand dollars?

A. Yes, sir.

Q. When did that happen?

A. The first of November.

Q. And how long was that after Mr. Dockendorff's departure? 2359

A. When I say it had reached fifty thousand dollars, it exceeded fifty thousand dollars; I mean by that that checks in excess of that amount for which they had not funds, had been drawn. I don't mean we had already heard from them. And Mr. Dockendorff—

Mr. Wolf: There is no question on the record.

Mr. Cohen: Yes there is: How long was that after Mr. Dockendorff sailed?

Mr. Wolf: How long was what after Mr. Dockendorff sailed? 2360

Mr. Cohen: The period when it reached fifty thousand dollars.

Witness: What date was it, October 29?

Mr. Cohen: Yes.

Witness: That would be three days.

Q. Now Mr. Williams, when you were testifying with regard to the conversation on the Monday preceding the bankruptcy proceedings, concerning the conversation between Mr. Dockendorff and Mr. Kepner, you used the expression "paramount duty." Was that your language describing what you understood to be Mr. Dockendorff's statement 2361 or were those words used by Mr. Dockendorff?

A. The words "paramount duty" were my interpretation of the words Mr. Dockendorff used. I cannot recite them: that is the impression it left on my mind.

Mr. Cohen: Mr. Referee, the duty was imposed upon me, I think rather unjustly, of calling your Honor's attention to a motion which Mr. Wolf was supposed to offer, to strike out an answer upon which your Honor reserved decision until the answer

2362 could be written out. I now perform the duty by calling your Honor's attention to pages 68 and 69 of the record.

The Referee: The motion was that all of the answer be stricken out?

Mr. Wolf: I think that, of course, the testimony is in the record and, as Mr. Cohen has remarked before, the harm of a leading question is done when the question is asked, and the harm in regard to that testimony has been done when the question is answered on the record, and I will withdraw my motion to strike it out.

2363 Redirect examination by Mr. Wolf:

Q. Mr. Williams, you have testified this morning with regard to a conversation you had with Mr. Greey, the Trustee, and Mr. Wolf, respecting Exhibits P301 and 360, inclusive, exhibits you had before you regarding Ferguson McKinney

A. Yes, sir.

Q. How many conversations did you have with Mr. Wolf and Mr. Greey?

A. One.

Q. And that is the one conversation that you referred to this morning?

2364 A. That is it, sir.

Q. Prior to that interview, had you ever called to Mr. Wolf's attention the details or the facts concerning which you have testified about this morning?

A. I had not.

Q. So that was, so far as you know, the first that Mr. Wolf knew about these exhibits and the facts in connection with them, when you called them to his attention at that one interview?

A. That is correct.

Q. Now, prior to that interview, had you called

these exhibits and the facts in connection with the exhibits to the attention of Mr. Dockendorff? 2365

A. Yes.

Q. How long prior?

A. Oh, it may have been a day or two days.

Q. You testified this morning that Mr. Wolf said to you that he was not greatly surprised in view of the testimony at these hearings, do you recall that?

A. Yes.

Q. Did Mr. Wolf say anything as to whether or not what you stated to him at that interview in connection with these exhibits was the fact or not?

A. Oh, no; no expression of opinion. 2366

Q. Isn't it a fact that Mr. Wolf stated to you that if the facts were as stated by you, or as surmised by you, in connection with these exhibits, he was not greatly surprised in view of the testimony that had already come out at these hearings?

A. I don't know that Mr. Wolf used that language, but the language that was used conveyed that idea to my mind.

Q. Mr. Cohen interrogated you as to where you found these sixty exhibits.

A. Yes.

Q. You testified you found them in the warehouse. 2367

A. No, sir.

Q. Where did you find them?

A. I found them—at the time that I found them and recognized them, do you mean, as such?

Q. Yes.

A. In a large filing drawer in the Trustee's office.

Q. And then what was done with them after you found them?

A. I put them on my own table.

2368 Q. And before you found them in the Trustee's cabinet, do you know where they were?

A. They had been unpacked by me with a helter skelter lot of correspondence and other office material, from the waste paper basket which had been placed by the Receivers in storage and taken out of storage under the Trustee's direction.

Q. What I want to find out is whether or not these exhibits were placed in the waste paper basket and put in storage by the Receivers, or the Schwab-Kepner Company prior to the receivership.

2369 A. By the Receivers.

Q. That was not done by the Schwab-Kepner Company, or anyone connected with the company?

A. Not by anyone who was then connected with the company.

Q. And how soon after you obtained these exhibits from the Trustee's cabinet and placed them on your desk did you communicate the facts to Mr. Dockendorff?

A. I think the following morning. I think I found them alone one evening—my recollection is.

Q. So you made no attempt to conceal the facts from Mr. Dockendorff?

2370 A. None whatever.

Q. And everything was told to him without any concealment whatever either on your part or the Trustee's part or Mr. Wolf's part?

Mr. Cohen: Objected to as involving a conclusion.

Objection overruled.

A. There certainly was none on my part and, so far as I am aware, there was no attempt at concealment on the part of the Trustee or of his attorney, Mr. Wolf:

Q. Do you know whether or not Mr. Greey knew anything further about the transaction about which you have testified in connection with these sixty exhibits, other than the information which you conveyed to him? 2371

A. He was present when his partner, Mr. Tatum, who is a brother of the Mr. Tatum who does business under the style of D. O. Tatum, made the remark that his brother did not know of these transactions.

Last question read.

Mr. Wolf: I move to strike out the answer as not responsive; the question could have been answered by yes or no. 2372

The Referee: I will let the question stand.

Mr. Wolf: I move to strike out the portion of the answer in which Mr. Williams refers to statements made to Mr. Greey by Mr. Tatum, Mr. Greey's partner, as not being called for by the question and as being hearsay evidence and not of any probitive force and effect.

The Referee: I think it is responsive to the question.

Mr. Wolf: Now, re-read the question to the witness and let him answer yes or no. 2373

Mr. Cohen: Objected to on the ground that the question, having been answered, there is no necessity for it being answered again.

The Referee: Objection sustained.

Q. Do you know whether or not Mr. Greey had any information concerning the facts in connection with the sixty exhibits about which you have testified, other than the information which you

2374 conveyed to him? And kindly answer that question yes or no.

Mr. Cohen: Objected to on the ground it has already been answered.

Objection overruled.

A. If you will define the word "facts," so I will know just what to testify to—

Q. Did Mr. Greey have any information that you know of concerning the facts which you reported to him in connection with these sixty exhibits? Kindly answer that yes or no.

A. Assuming that you mean as to the finding
2375 of these documents, no.

Q. Well, Mr. Greey received the information that you conveyed to him?

A. Yes.

Q. Beyond that what, if any, independent information concerning the facts did he have, so far as you know?

A. Only the statement made at a conference between Mr. Greey, his partner, Mr. Tatum, and myself.

Q. Beyond that did he have any other information?

A. Not that I am aware of.

2376 Q. And did he ever tell you that he had any other information?

A. Not at that time.

Q. At any other time?

A. That answer is susceptible to two meanings, I see from your subsequent question. As far as I know, at the time of this conversation he had no other information than that which I have stated.

Q. Subsequent to that interview, did he have any other information that he ever communicated to you?

A. Yes, that he had had a call from a repre-

sentative of the Ferguson McKinney Company. 2377

Q. Did he have any information regarding the D. O. Tatum account that he ever communicated to you?

A. He may have commented along the same lines as his brother's statement.

Q. Do you recall that he said anything to you regarding any information he had regarding the D. O. Tatum account?

A. None but that which I have testified to.

Q. At which interview did Mr. Greey tell you this was a perfectly rotten transaction?

A. My recollection is that that is an expression used by him at a conference between Mr. Dockendorff and Mr. Greey and myself in regard to the accounts receivable. 2378

Q. Now, you have testified that neither you nor Mr. Dockendorff knew that any goods were billed where the goods were not actually delivered?

A. No, sir, I have not testified to that.

Mr. Cohen: The goods had not been ordered. It is an entirely different thing.

Q. Did you know that goods had been delivered to different brokers, Tatum and others, and that Mr. Kepner had the privilege of selling the goods which he had thus delivered, provided he sold the same before they were disposed of by the parties to whom they were delivered? 2379

Mr. Cohen: Objected to on the ground it has been answered on the direct examination of the witness.

The Referee: Of this witness?

Mr. Cohen: Yes.

The Referee: Where?

Mr. Cohen: Page 33.

After discussion.

Objection overruled.

2380 Q. (Last question read.)

A. I think that question is not accurate, Mr. Wolf. May I suggest an amendment?

Q. Go ahead and answer the question in your own way, if you will.

A. Yes. Mr. Kepner's own statement was that where he had billed goods to brokers, not delivered them, that he had arranged with them that he was to have the privilege of cancelling the sale to the broker and to make a sale himself provided he could do so, at a higher price.

Q. What sort of goods did those sales refer to; sales of gray goods?

2381 A. Gray goods, yes.

Q. With what firms do you know, was such an arrangement made?

A. I had no knowledge that such an arrangement ever was made. Mr. Kepner recited that to me.

Q. Did he tell you?

A. D. O. Tatum and Wynne Ferguson and Ferguson & McKinney Company.

Q. Now, the sales purporting to be shown by Exhibits 301 to 360, can you tell whether or not that purports to show sales of goods in gray or other goods?

2382 A. The goods described in these exhibits show that they were sold as gray goods.

Q. Did you ever get any further information, or did Mr. Kepner ever tell you anything further respecting the goods in gray which he billed to the brokers whom you have named with the privilege on his part of reselling the goods if he disposed of them before the brokers did?

A. Frankly, Mr. Wolf, that is such a wide question, I don't know how to answer it.

Q. I want all that Mr. Kepner ever said to you

in addition to what you have testified to on that subject. 2383

A. Do you refer to the conditions of the sales?

Q. Yes.

A. I have no recollection that any statement was ever made by Mr. Kepner other than the one I have recited, which was made to Mr. Dockendorff and to me.

Q. Well, was that statement you have testified to made to Mr. Dockendorff in your presence?

A. Yes.

Q. What did Dockendorff say to Mr. Kepner when Mr. Kepner told him that?

A. I don't recall anything beyond an inquiry 2384
on Mr. Dockendorff's part to make sure he thoroughly understood the situation as Mr. Kepner explained it.

Q. Now, will you tell us what inquiry Mr. Dockendorff made and what Mr. Kepner said in answer to that inquiry?

A. My recollection is that Mr. Dockendorff repeated in his own words the statement as he understood it, made by Mr. Kepner, and asked if that was what the transactions were.

Q. What did he say?

A. Mr. Kepner?

Q. Mr. Dockendorff. You say he repeated the 2385
transaction in his own words.

A. He repeated Mr. Kepner's statement in his own words.

Q. Now, let us have what he said to Mr. Kepner.

A. I cannot recite the words.

Q. Did he say, "Now, Mr. Kepner, I understand the transaction to be so and so?"

A. Something to that effect, yes.

Q. What did he say he understood the transaction to be?

A. That the sale was a *bona fide* sale; that the

2386 purchasers were billed for the amount of the bill and that the only qualification was that Mr. Kepner was to be allowed, if he could, to dispose of the goods at a higher price, provided these parties to whom they were billed had not disposed of them prior to that time.

Q. Was there anything said at that meeting regarding why such a sale was made; that is, a sale which could be defeated?

A. I am unable to distinguish between what might have been said and what conclusion I drew myself.

Q. What is your best recollection as to what was
2387 said?

A. I think Kepner explained that the object of this was merely so he might meet maturing obligations; or, I should say, that he was compelled to meet maturing obligations.

Q. Did he say whether or not these grey goods were being billed at a profit or a loss?

A. I don't think he made any statement to that effect, either one way or the other.

Q. You only recall one interview when you were present when that was discussed between Kepner and Dockendorff?

A. That is correct.

2388 Q. Can you fix the time of that interview?

A. As nearly as my memory serves, towards the end of September.

Q. You testified on page 12a, "I know that I had expressed an opinion as to the fact that they were making sales that did not yield a profit," and I asked you to fix the time approximately and you testified, "The only peg on which I can hang the time is this, it was perhaps ten or twelve or fifteen days before the time when Mr. Dockendorff first expected he would be absent, or then stated he would be absent." But you did not state when

Mr. Dockendorff said to you,—when he first ex- 2389
pected to be absent. Will you please fix that time?

A. My recollection is that the time first stated by Mr. Dockendorff was approximately the fifteenth day of September.

Q. You testified on page 69 that as a result of the transaction about which you then testified, you sent in a letter to Mr. Dockendorff, tendering your resignation and giving your reason for it; is that correct?

A. That is correct.

Q. To whom did you tender the resignation?

A. To Mr. Dockendorff.

Mr. Wolf: I call upon Mr. Dockendorff 2390
to produce that letter.

Mr. Cohen: We haven't got it here.

Q. Have you a copy of it?

A. I have not. I did not keep a copy, unfortunately.

Q. Did you send a copy of this letter of resignation to the Schwab-Kepner Company?

A. I did not.

Q. Was the only copy that you had sent to Mr. Dockendorff?

A. Yes, sir.

Mr. Wolf: I understand that will be pro- 2391
duced.

Mr. Cohen: Yes.

Mr. Wolf: If it is not produced I want it understood I can recall Mr. Williams to give the contents of the letter.

The Referee: Of course, you can.

Q. You testified in answer to Mr. Cohen's questions that you protested to Mr. Kepner about the kiting of checks?

A. Yes.

2302 Q. Can you recall when you first protested?

A. Did you want me to name it by the date of the month?

Q. No, name it by the month.

A. Oh, in October.

Q. Did you ever protest to Mr. Kepner before that time?

A. I do not think so. Up to that time I had not recognized or expected there would be anything more than an occasional occurrence.

Q. When was it that you illustrated that to Mr. Kepner, using a paper weight as an illustration; it was a weight on one end which would fall
2303 over and someone would get hurt?

A. My best recollection is about the twelfth or fifteenth of October.

Recross examination by Mr. Cohen:

Q. You testified as to how soon after you discovered these papers you communicated the facts to Mr. Dockendorff. How soon after you discovered the papers did you communicate the fact to Mr. Greey?

A. My recollection is that I found these papers on the late afternoon or in the evening of one day and that the following day Mr. Dockendorff
2304 called me up on the phone and I told him I had something. I was coming over to see him about, and he asked me what it was and in a brief way I told him over the phone. The documents were shown to Mr. Greey not later than two days, it may have been one day; it may, possibly, though I do not think so, have been the same day.

Q. Was it the first time you saw Mr. Greey after the discovery of the papers?

A. I do not know, Mr. Cohen. My recollection is that I had occasion to go to Mr. Greey's office and put those papers in a large envelope and took them up, along with some other documents.

Q. Was that the first time you saw Mr. Greey after the discovery of the papers? 2395

A. It would be the first time I had any extended conversation, and probably was the first time, and if it was not, it was probably the first time I had any opportunity to have any time with him.

Q. Did you see the original of this letter, Exhibit P101 for identification, of this date?

A. Yes, sir.

Q. Did you have any conversation with Mr. Greey with reference to it?

A. Mr. Greey was not here when I received that letter.

Q. Subsequent to the receipt of the letter did you have any conversation with Mr. Greey concerning it? 2396

Mr. Wolf: I object to that as incompetent, irrelevant and immaterial and an endeavor on the part of the litigant to have a self-serving declaration used as the basis of making the record.

After argument.

Objection overruled.

Q. (Last question read.)

A. I have not seen Mr. Greey since two weeks ago last Saturday. 2397

The Referee: Answer the question yes or no.

Witness: No.

Q. You saw the original of this letter?

A. I did, sir; I opened it.

Q. At or about the time it bears date?

A. I cannot fix the date it was received. If it was mailed at once it came in due course of mail.

Q. Will you be good enough to take this letter and see whether or not it will refresh your recol

2398 lection as to the date when you advised Mr. Dockendorff that the original invoices were found among the records of the Schwab-Kepner Company?

Mr. Wolf: I object to Mr. Williams looking at a self-serving declaration of Mr. Dockendorff, sent to the Trustee in bankruptcy, long after the litigation, for the purpose of refreshing his recollection or any other purpose.

The Referee: It is a letter received in the mail by this witness?

2399 Mr. Wolf: No, the Trustee.

The Referee: No, he received it in the mail, or opened it.

Mr. Cohen: The letter contains a request that the Trustee look up certain information, and the letter came to this witness as the Trustee's representative and in the mail and contains an order. What better way of refreshing the witness' recollection concerning a transaction is there than correspondence with reference thereto?

The Referee: He can refresh his recollection from any document that will aid

2400 his recollection. Objection overruled.

Q. (Last question read.)

A. (After referring to paper.) No, it does not.

Q. Does it refresh your recollection as to the circumstances connected with your communicating the information to Mr. Dockendorff?

Mr. Wolf: I object to that, because as I understand the record, the witness, with regard to those transactions, is the witness of counsel for Mr. Dockendorff and it has not been shown that this witness' recollec-

tion on the subjects in question is deficient. 2401
Question withdrawn.

Q. Can you give us the exact date when you discovered those papers, the Exhibits P301 to 360?
A. I cannot.

Q. Can you give us the exact date when you communicated the discovery of the papers to the Trustee?

A. I cannot.

Q. Can you give us the exact date when you communicated it to Mr. Dockendorff?
A. I cannot.

Q. Now, by looking at this leter, will it aid you to recall the exact dates when you did communi- 2402
cate those facts?

A. No— As to the exact dates?
Q. Yes.
A. No, sir.

Q. Will it aid you to give the approximate dates when the two communications occurred, the one with Mr. Dockendorff and the one to the Trustee?

Mr. Wolf: The witness has been able to give relative dates. It does not appear his recollection is deficient with respect to that.

The Referee: Not relative dates. He has been able to give the order of the communi- 2403
cations but not the dates, and this communication relates to dates.

A. I cannot state any exact date; I did not make any memorandum of it.

Q. That does not answer the question. (Last question read.) This letter, will it aid you?

Mr. Wolf: I object to that question. I think if they are to be allowed to use this letter, the question should be "After looking at this letter, can you recall the date when you did it?"

2404 The Referee: The question should be whether it refreshes his recollection.

Mr. Cohen: That I understood to be the question.

Witness: No, the letter does not refresh my recollection.

Q. After looking at that letter, is your recollection refreshed as to the circumstances under which you communicated the fact to Mr. Dockendorff?

Mr. Wolf: I object to that, because it does not appear that the witness' recollection is deficient, and it is on an examination
2405 by his own counsel; this witness was Mr. Cohen's own witness and it appeared he recalled the transactions quite fully.

Objection sustained.

Q. When you first communicated the discovery of the documents to Mr. Dockendorff, is it your testimony that you did so over the telephone?

A. That is my recollection.

Q. Did you communicate the facts to Mr. Greey over the telephone?

A. I did not.

Q. You waited until you saw Mr. Greey personally?
2406
A. Yes.

Q. And you then exhibited the documents to Mr. Greey?

A. That is my recollection.

Q. And at the interview which you had with Mr. Dockendorff subsequent to your telephone conversation, you then exhibited the documents to him?

A. Subsequent to my telephone conversation with Mr. Dockendorff, I exhibited the documents to Mr. Dockendorff.

Q. Did you leave the documents with Mr. Dock- 2407
endorff?

A. I do not think so.

Q. Did you take them with you?

A. I think I did.

Q. And did you keep them in your possession?

A. I think I did, yes.

Q. And you did that because you felt, as a representative of the Trustee, it was your duty to keep them in your possession?

Mr. Wolf: I object to that as incompetent, immaterial and irrelevant. On this question this witness is Mr. Cohen's witness, and it does not make any difference 2408
what he felt. He did keep them in his possession or custody.

Objection overruled.

Q. (Last question read.)

A. That is correct.

PHILLIP S. SUFFERN, sworn for the respondent.

Direct examination by Mr. Wolf:

Q. What is your business?

A. That of a public accountant. 2409

Mr. Cohen: The qualifications of Mr. Suffern as an expert accountant are conceded.

Q. You are connected with what firm?

A. Suffern & Sons.

Q. Certified public accountants?

A. Yes.

Q. Did you examine the exhibits and the sched-

2410 ules produced by Mr. Dockendorff when he was examined?

A. Yes.

Q. You were here when he was examined, were you not?

A. At the hearing at which he was produced.

Mr. Cohen: Refer to them by exhibit numbers, please.

Mr. Wolf: Exhibit P9 is my recollection of it.

Q. Did you examine the various schedules making up Exhibit P9 in this proceeding?

2411 A. Exhibit P9 was a single schedule, unsupported.

Q. Produced by Mr. Dockendorff?

A. Produced by Mr. Dockendorff.

Q. It contained a number of sheets?

A. Several sheets.

Q. Now, have you a tabulation of those different sheets making up that exhibit?

A. No.

Q. Have you segregated the items appearing on that exhibit?

A. Not for the full period.

Q. For the period from August 1st, 1910, to No-

2412 vember 28, 1910, have you segregated the items between those dates?

A. Yes, I have.

Q. And how have you segregated them, covering what periods of time?

A. From August 1st, 1910, to the end of the statement, or November 29, 1910; the debit entries on that account were segregated into three divisions.

Q. First give the different periods of time; have you segregated the different weeks?

A. Into weeks, the calendar weeks of that year.

Q. In other words, week by week? 2413

A. Week by week.

Q. So that the first entry in that segregated statement appears to cover the period from August first, 1910, to what date?

A. To August 6th, which was Saturday of that week.

Q. And the next period is August 8th to August 13th, 1910?

A. Yes.

Q. And the next August 15th, to August 20th, 1910?

A. Yes.

Q. And in that manner you continue down to 2414
the 29th of November, 1910?

A. That is right.

Q. Now, did you see the XC items on those schedules?

A. There were no XC schedules.

Q. The XC items.

A. There were no XC items on that schedule.

Q. On what schedules do the XC items appear?

A. At that hearing there were exhibited collateral schedules showing the accounts assigned between different dates. That was divided into XC and other items.

Q. Now, coming back for a moment to Exhibit 2415
19, into how many subdivisions did you segregate the different items week by week?

A. The different debit items I segregated into three divisions week by week.

Q. What were they?

A. They were advances, representing the checks sent by Dockendorff to Schwab-Kepner, protested checks charged back by Dockendorff to Schwab-Kepner and interest and commission charges made by Dockendorff to Schwab-Kepner; and included

2416 in that heading were the amounts paid by him as accountant's salaries.

Q. Anything else?

A. Nothing else.

Q. So that the aggregate of these three items would be week by week the total debit of the account current?

A. That is right.

Q. And the figures that you obtained were all obtained from the papers submitted by Mr. Dockendorff?

A. The various papers, yes.

Q. Now, do you recall what the debit balance of
2417 the Schwab-Kepner Company to Dockendorff was as of August 1st, 1910, as appeared by the papers submitted by Mr. Dockendorff in evidence.

A. That difference, with an adjustment was $170,018.80.

Q. Now, when did it reach its highest amount?

Mr. Cohen: I object to that on the ground it involves a conclusion. I think the statistics are the best evidence.

Mr. Wolf: I think an expert accountant can tell when one figure is larger than another.

2418 Mr. Cohen: I think if there has been a table prepared showing this data, we are entitled to have the table for the purpose of comparison and cross examination. I might say this: If Mr. Wolf will permit me to see the summary of schedules prepared by the accountant, I may be willing after examination, to permit them to go into evidence.

The Referee: I think we ought to show the balance week by week.

Mr. Wolf: May I go ahead in this man-

ner subject to my eliminating it if the wit- 2419
ness is going to testify to a conclusion as to what it is week by week? I want it on the record in some intelligent form.

The Referee: You are going to show it?

Mr. Wolf: Yes.

The Referee: I will permit it.

Mr. Cohen: May I suggest that before testimony of the witness, an expert accountant, involving computations and figures requiring both the Court and counsel to examine the testimony be given, that the witness submit the prepared schedules of his computations, with an opportunity to coun- 2420
sel to examine the prepared schedules so that the inquiry may be shortened by the admission of the paper rather than the oral testimony of the witness?

Mr. Wolf: Are you willing to have this go in evidence?

Mr. Cohen: If you will give me an opportunity to examine it I am willing to do so.

Mr. Wolf: I am willing to show it to you now, providing you will let it go into evidence.

The Referee: Don't you intend to offer 2421
it?

Mr. Wolf: Not the whole business. A great deal of it is repetition.

The Referee: Do you intend to offer some of those schedules? I agree with Mr. Cohen that it is a very much more satisfactory way than to put them in the testimony and make a search for them afterwards.

After argument.

Mr. Wolf: All right, I will offer this whole business in evidence.

2122 Mr. Cohen: All right, I want an opportunity to examine it.

Mr. Wolf: I withdraw the offer.

Mr. Cohen: I object to the withdrawal.

I protest against counsel making an offer of evidence containing some three or four hundred pages of an accountant's report, of schedules, and insisting that counsel examine those pages on the instant and decide whether or not he shall consent to the admission in evidence, or pay the penalty of having the evidence withdrawn.

After argument.

2123 Mr. Wolf: My inclination is to let them have everything we have here. My inclination is to let them have it to-morrow morning. My inclination is to let them have everything else we got from Mr. Suffern, and then after they have had an opportunity to investigate it, we will offer it in evidence.

If they want to object to it, all well and good; if they don't, all well and good.

Adjourned until Friday, March 17th, 1911, at ten thirty o'clock in the forenoon at the same place.

2124

Continuation of proceedings before Edwin G. Adams, Referee in Bankruptcy, as Special Master, at the rooms of the New York County Lawyers Association, 165 Broadway, New York City, on the petition of John E. Dockendorff, on Friday, March 17, 1911, at ten-thirty o'clock in the forenoon. 2425

APPEARANCES:

JULIUS HENRY COHEN, Esq., and GIRARD B. TOWNSEND, Esq., Attorneys for the Petitioner.

RALPH WOLF, Esq., JAMES N. ROSENBERG, Esq., and GARRARD GLEN, Esq., for the Trustee. 2426

JOHN B. KEPNER, recalled on behalf of the Trustee.

Direct examination by Mr. Wolf:

Q. Mr. Kepner, did you send any of the January 1st, 1910, mercantile agency statements to creditors direct?

A. Yes.

Q. Which ones that you can now recall? Name one or two.

A. I sent one to the Valley Falls Company and the Wampanoag Mills. 2427

Q. You testified with regard to the long contracts that your company had. Do you recall that testimony?

A. Yes.

Q. Do you recall what the market conditions were for the goods in which your company dealt, after the first of January, 1910? Was it a rising or a declining market?

Mr. Cohen: I object to that. We have been over that generally. And if it be-

2428 comes necessary to show the condition of the market from day to day, the witness' generalization is not the best evidence. The witness has testified it is possible to ascertain these conditions from quotations of the market.

Mr. Wolf: I want to show by this witness as an expert what the market conditions were generally. I am not going into details. The fact that these market conditions are quoted in the newspaper does not make it evidence. The way to prove market conditions is from an expert. If I
2429 wanted to prove market conditions in Wall Street, I could not put the Evening Sun in evidence. I would have to call a member of the Stock Exchange.

The Referee: The only proof is there was a poor market during 1910. I think that is the only testimony I received. I do not see that it helps them now.

Mr. Cohen: That may answer one point I raised, but not the other. If it is proposed to show the comparative condition of the market, the condition on each day should be shown in order that the Court
2430 can draw its conclusion therefrom, instead of the generalization of the witness. It is based upon statistics, upon actual conditions.

Objection overruled.

Mr. Cohen: Your Honor takes the answer subject to objection and motion to strike out later?

The Referee: Subject to the objection. You can make the motion later, if you wish.

Q. (Last question read.)

A. It was a declining market.

Q. How long did that decline continue? 2431

A. There was a gradual decline for the entire year.

Q. Down to the time of the receivership?

Mr. Cohen: My objection is to the entire line, repeating it to each question.

The Referee: It will be considered the objection is to the entire line. The objection is overruled.

A. Yes.

Q. On what terms did the Schwab-Kepner Company buy goods from the mills?

A. Generally on terms, net ten days, extra in 2432
terest added. These terms were changed sometimes to longer time by the acceptance of notes or continuation of accounts.

Q. Can you tell whether or not the goods sold by the Schwab-Kepner Company subsequent to August 1st, 1910 were goods which were, in the main, delivered under the long contracts that you testified about, or under the ten day contract, with privilege of renewal?

Mr. Cohen: I object to that, because it calls for the witness' deduction from a series of transactions.

Mr. Wolf: I am asking whether he can 2433
tell it. I am not asking what the fact is. I am asking now whether he knows.

Mr. Cohen: I do not see how he can without an examination of the record, and I am sure no ordinary individual can say at this day how much of these goods related to contract made a year previous and how much related to contracts made a week previous.

The Referee: I would suggest that you first enquire whether that fact is ascertain-

2434 able, from any records because the records are the best evidence.

Mr. Wolf: We have endeavored to ascertain it from the records and the accountants have not been able to do it.

Mr. Wolf: Why don't you ask him whether it is ascertainable?

Q. Do entries appear in the books, Mr. Kepner, which would show under what contracts the goods sold within the period from August 1st to December 1st, were obtained.

A. Yes, that can be ascertained.

2435 Q. How would you ascertain that?

A. Every contract that was placed with the mill was placed on a card with the date of the contract and the deliveries against that contract were also entered on that card.

Q. Now, can you, by an examination of the books or records or documents, refresh your recollection so that you can testify whether or not the goods sold by you within the period, say, from August 1st, 1910, to December 1st, 1910, were goods obtained on the so-called long contracts or on what I shall term the so-called short contracts?

Mr. Cohen: I object to that line of inquiry on the ground it is not a matter to refresh the witness's recollection, but is a matter of facts which the witness says is now obtainable.

The Referee: Objection overruled.

Q. (Last question read.)

Mr. Cohen: I object to it upon the further ground that the witness cannot be asked whether certain data or memoranda will refresh his recollection unless the data or memoranda are shown to him.

The Referee: It seems to me your ques-

tion ought to be whether an examination of 2437
those books would disclose these facts; not
as to whether it would refresh his recol-
lection, but as to whether they would dis-
close this.

Q. You said the contracts with the mills were entered on a card?

A. Yes.

Q. And each contract had a separate card?

A. Each contract had a separate card.

Q. And the card would show the contract price?

A. Yes.

Q. And how would the price be obtained on the 2438
sale of those particular goods?

A. Well, of course, that would involve somewhat of an investigation. It is easily traceable from the books, just what became of each piece of goods, and by tracing the mill delivery to us through the bleachery by a lot number which was given and then by getting the cases delivered by the bleachery against that lot. When the bleachery reinvoiced the goods to us as finished goods, they came in cases; each case was entered on a card by itself. The disposition of each case appears on that card and the price obtained for the goods appears on the card. You can easy enough 2439
by investigation find out—

By the Referee:

Q. You can trace it by the lot numbers.

A. Start in by using the contract card and then take each delivery from the mill and ascertain what lot that was in the bleachery. Then ascertain what cases were delivered by the bleachery against that lot and by referring to those cases cards, you would find what we obtained for the goods.

Q. Now, can you tell what proportion of goods sold by the company within the period from August 1st to December 1st, 1910, were goods bought on the so-called short contracts?

Mr. Cohen: Do you mean whether he could tell from the cards or can he tell now?

Mr. Wolf: Now.

Mr. Cohen: I object to the question on the ground it appears there are records available for the purpose of determining
2441 that question, and the records are the best evidence.

After argument.

The Referee: I haven't any doubt this testimony is incompetent. Objection sustained.

Cross examination by Mr. Cohen:

Q. Mr. Kepner, the statements which you testified you sent to the Valley Falls Company and the Wampanoag Mills, were they in writing?

A. Yes, of course; you mean typewritten.

2442 Q. Were they upon any forms submitted to you by the Valley Falls Company or any other mills?

A. No.

Q. Were they prepared by you?

A. They were summarized by me.

Q. And did you sign them?

A. Yes.

Q. And after they were sent to these mills, were any further inquiries made of you?

A. No.

Q. Were you asked by either of these mills at any time whether or not you were borrowing money on collateral?

A. I don't recall that I was, no.

Q. So far as you can recall, no inquiry of that kind was ever made by those mills? 2443

A. That is right.

Q. Were you ever asked by them as to whether or not any of your assets were pledged as collateral for any of your liabilities?

A. I don't recall whether I was or not.

Q. Have you any recollection of ever being asked by either of these mills?

A. No.

Q. You testified this morning, Mr. Kepner, that the market declined continually, right down to the receivership. Were you of opinion at any time during the year that the decline would continue or that it would change? 2444

A. I had a firm opinion that the market would change.

Q. And when did you form that opinion?

A. I had that opinion more or less during the entire year.

Q. Did you try to arrive at that opinion in good faith?

A. Oh, yes. I think the opinion was shared by the majority of operators in our line.

Mr. Wolf: I move to strike that out.

The Referee: It will be stricken out.

Q. In coming to your opinion, did you make inquiries from others? 2445

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant.

Objection overruled.

A. Yes.

Q. From whom?

A. Brokers and mill agents, competitors and customers.

Q. Did that inquiry result in any change in the opinion which you had?

A. No.

2446 Q. Did it tend to confirm that opinion?

Mr. Wolf: I object to that.

Objection sustained.

Q. State what effect, if any, those inquiries had upon your opinion?

Mr. Wolf: Same objection.

After argument.

The Referee: You are entitled to show that he made inquiries and what opinion he formed as a result of those inquiries. That, I think, you have done, and I think that is as far as you can go. Objection sustained.

2447

Mr. Cohen: I except to your Honor's ruling.

Q. Did you make the inquiries concerning which you have testified upon more than one occasion?

A. Yes.

Q. How frequently did you make such inquiries?

A. Very frequently.

Q. What do you mean by "very frequently," in time?

2448 A. I imagine I discussed it—I think I could say nearly every day, without much exaggeration.

Q. And was there any time when, as the result of these inquiries, your opinion that the market condition would change was altered in any respect, prior to the filing of the petition in bankruptcy?

Mr. Wolf: I object to that.

Objection overruled.

A. I can only testify now as to my opinion that I finally arrived at. I may have had degrees of

so-called optimism, but undoubtedly I was affected 2449
by each interview, in the matter of degree; but my general opinion was, and my belief was, that the market conditions would change so as to enable us to do business at a profit.

Q. And did you endeavor to arrive at that opinion with the best judment that you had?

A. Yes.

Q. And with all of the available sources of information at your command?

Mr. Wolf: I object to that. We have gone over that several times now.

Mr. Cohen: I am entitled to show the witness was not careless, either wilfully 2450
careless or—

The Referee: He can testify whether he used all available resources. Objection sustained.

Q. But so far as you know, in making your inquiries in good faith as you have said, did you neglect or omit any sources of information available to you?

Mr. Wolf: I object to that. This is a new matter Mr. Cohen is going into and it seems to me if he is going into that he can ask the witness what sources he availed 2451
himself of or what he didn't.

Mr. Cohen: This is not a new matter; this is brought out by the testimony elicited this morning to the effect the market declined to the time of the receivership.

Objection overruled.

A. I think I can answer as to the neglect, but as to the omit, I do not think I am competent to answer. I did not neglect any.

2452 The Referee: You did not intentionally omit it?

Witness: I did not intentionally omit it.

PHILLIP S. SUFFERN, recalled.

Cross examination by Mr. Cohen:

Q. Mr. Suffern, my examination for the present will be devoted to an effort to understand this report, with a view to determining whether or not we shall permit it to be admitted.

Turning to the first part of the report on page one, will you be good enough to tell us precisely
2453 what exhibits you used in making up these reports, what exhibits that are in evidence and if there are any not in evidence, what exhibits not in evidence were used?

A. Without referring to this and—

Q. You may refer to it.

A. (referring to paper): Petitioner's Exhibit 9, which was the account current as prepared by Mr. Dockendorff, was the basis of the preparation—

Q. Do not go into the details now. Give me a list of the exhibits that you relied upon.

A. P. 9—

2454 Q. Was that the account current?

A. Yes. I will tell you without giving you the numbers if that is agreeable.

Q. Yes.

A. The account current, the list of August first; the pink slips representing charges back by Mr. Dockendorff; the collateral schedules sent Mr. Dockendorff by Schwab-Kepner; the remittance sheets sent Mr. Dockendorff by Schwab-Kepner; in addition to those exhibits reference was made to the sales books of the Schwab-Kep-

ner Company and the sales orders and charge slips of the Schwab-Kepner Company. 2455

Q. Those were not in evidence?

A. Those are not in evidence.

Q. Of course, those were not turned over to you by Mr. Dockendorff?

A. No.

Q. You got those at the Schwab-Kepner Company office?

A. Yes, I think that is all the records used in the preparation of this report.

Q. On page one of this report you say, "We have made an examination of the records submitted to us by Mr. Dockendorff and of the shipping records turned over to us by Mr. Williams." 2456

A. The shipping records turned over to us by Mr. Williams consisted of the sales books mentioned before and the sales orders and charge slips which contained the dates of the shipments of the various invoices.

Q. Those are not exhibits in this proceeding?

A. They are not.

Q. So your report is made up from documents in evidence and documents not in evidence?

A. That is right.

Q. Were you given opportunity to investigate into all of the transactions between Mr. Dockendorff and the Schwab-Kepner Company or did you confine yourself within the limits of the exhibits you have mentioned and within the limits of the instruction you received from your client? 2457

A. No effort was made to determine the extent to which the records of the Schwab-Kepner Company were open to us for our investigation. The report was based on the exhibits in this proceeding turned over to us for our inspection, and such other information as was desired to complete the schedules, which I understood was desired by the counsel.

2458 Q. Were you instructed to prepare certain specified schedules along certain lines?

A. I was not.

Q. Did you suggest the lines of the schedules or did counsel suggest them?

A. They were not suggested by either of us.

Q. How did it come that you adopted certain classifications in certain schedules in this report?

A. The forms of the schedules were prepared by me to bring out what I considered to be counsel's desires.

Q. By "counsel's desires," now, do you mean—in using the expression "counsel's desires," what
2459 counsel do you refer to?

A. I refer in this case to counsel for the Trustee.

Q. You then classified and arranged the data in accordance to what you believed was their desire?

A. No, sir.

Q. Then, what do you mean by your previous answer?

A. Not what I believed was their desire, because I conceived counsel cared very little for the form of the presentation of the material.

Q. But, you knew what their theory of the
2460 case was?

A. No, sir.

Q. Did you know any of the theories of the case they were advancing?

A. Yes, sir—I thought I did.

Q. They discussed with you their theories of the case before you began the work of classifying these items?

A. No, sir.

Q. Did they talk that over with you?

A. Certain parts of it.

Q. You mean by your answer then, that you

thought you understood certain of the theories of the case which counsel in the case had? 2461

A. I thought I did.

Q. Now, you refer in these schedules, do you not, to certain transactions which are called "charge back"?

A. Yes.

Q. Where did you get the information as to what that term meant?

A. I believe the information originated with me by reading the testimony previous to the delivery of certain slips which were called "charge backs," in that testimony, and at the hearing at which the papers were turned over to us for our examination. 2462

Q. Were you ever shown the contract between Mr. Dockendorff and the Schwab-Kepner Company?

A. No, sir.

Q. Did you ever examine that contract?

A. I never saw it.

Q. Have you endeavored to determine in any way, for the purpose of making up the account, the legal rights of Mr. Dockendorff or the Schwab-Kepner Company to these so-called charge back accounts?

A. No, sir. 2463

Q. In preparing these schedules you had to make certain assumptions as to these charge backs, did you not?

Mr. Wolf: There is nothing in the record. You mean he can answer that yes or no?

Mr. Cohen: Yes.

Mr. Wolf: Either yes or no.

Mr. Cohen: Yes.

A. Yes.

2464 Q. Where did you get that assumption?

A. That was a mental assumption that a charge back constituted—that Mr. Dockendorff was advising Schwab-Kepner & Company that he was charging back certain amounts.

Q. Then is it fair to say that you treated that as being a release of the collateral by Mr. Dockendorff to the Schwab-Kepner Company?

Mr. Wolf: I think, Mr. Referee, that he ought to ask the witness the question that the witness probably can answer more intelligently.

2465 Mr. Cohen: He may answer it in his own way.

A. I endeavored to make no assumptions in this reporting. You speak about the legal question. I tried to put the facts as they were found in the forms that would perhaps be plainest to those examining the reports. I mean in this case that I did not assume how it would affect it. I merely showed it and the assumption is to be drawn by others.

Q. Now, on page 8 for example, take the last column on page 8. In arriving at these balances there did you not as a matter of fact take into
2466 account Schedule D there headed "Amounts charged back to Schwab-Kepner Company by J. E. D."?

A. I did.

Q. And was not that based upon the theory—

Mr. Wolf: Ask him how it was taken into account.

Mr. Cohen: No. I am asking the question.

Q. And was not that based upon the theory that that collateral no longer remained the collateral

of J. E. Dockendorff, but became the collateral of the Schwab-Kepner Company? 2467

A. No, sir.

Q. Then upon what theory did you make up schedules in which you treated the checks on such accounts as remittances of Schwab-Kepner Company to be credited to them?

A. On the testimony which I had read in which Mr. Dockendorff stated that he considered for the purpose of advances that the charge back eliminated that collateral from the good accounts.

Q. Will you please turn to the testimony upon which you rely for that, in Mr. Dockendorff's examination? 2468

Mr. Wolf: I object to their asking the accountants to go through the testimony and point out sections of the testimony.

Mr. Cohen: I think your Honor is entitled to understand precisely the theory upon which this account is made up, and I do not see how you can do it without referring to the testimony.

After argument.

Objection overruled.

Mr. Wolf: I suggest they ask Mr. Suffern what the method is with respect to the charge back, what he has done with that and you will see the theory on which he prepared the account and you can determine whether his theory is correct, and if it is not it will be eliminated. This compels Mr. Suffern to go through hundreds of pages of Mr. Dockendorff's testimony and pick out portions of that testimony. 2469

Now, Mr. Cohen, can you say "Did you in this security account include the charge back, and if so how?" and you have his theory and you can determine under the

2470 evidence in the case whether that theory or not is justified in law. That seems to be the proper way to examine the accountant, to help the Referee and to help the counsel.

Mr. Cohen: I do not propose to carry on this examination in this way all the way through. But this particular point I want to cover, and I shall drop this and follow it up in another way.

A. It would probably take questions and answers through two or three hearings to find out everything on which I base my conclusion.

2471 Q. Now, will you please state upon the record a summary of what you understood to be Mr. Bockendorff's testimony upon this point?

Mr. Wolf: Objected to as incompetent, irrelevant and immaterial.

Mr. Cohen: Which you adopted for the purpose of preparing this account.

Mr. Wolf: I object to that for the same reason, and also as calling for a conclusion. I have not any objection to their asking the witness what his method was with reference to the accounting.

2472 Mr. Cohen: I am entitled to the theory.

The Referee: I think you are entitled to have the theory.

Objection sustained.

Q. Please tell us, Mr. Suffern, upon what theory you treated the charge back account in the preparation of these schedules?

A. As supported by the testimony?

Mr. Wolf: Give him your theory of what you did with the charge backs.

Witness: I considered that the charge

backs, from Mr. Dockendorff's standpoint, released the security as far as any advance against the same was carried and that after the account became a charge back, it was additional security retained by Mr. Dockendorff against which no actual money was loaned but which he still claimed as an account should the same be paid. 2473

Q. How did you treat that when making up your amounts as collateral that Mr. Dockendorff held for previous advances prior to the charge back period, by prior to the charge back period I mean the time referring to the advances.

A. I don't know what you mean by "treat." 2474

Q. Now, in making up these schedules you understood that Mr. Dockendorff had made advances on these accounts which subsequently became charge back accounts, did you not?

A. In the majority of instances.

Q. And according to your previous testimony you treated those in the accounts as collateral which Mr. Dockendorff continued to hold but upon which he made no further advances, is that correct?

A. That is correct.

Q. Now then, why when you made up this last column, on page 8, of "Balance Security Account," purporting to show the balances on the respective dates on the security which Mr. Dockendorff held, did you exclude the charge back accounts? 2475

A. Why did I exclude?

Q. Why did you deduct them from the balances of the security which you are endeavoring to give us in satistical form, as being the balance of security held by Mr. Dockendorff on a particular day?

Mr. Wolf: I object to that question as incompetent, irrelevant and immaterial.

2176 The Referee: I think there is a reason for it. The only question is what is the theory upon which they made it up?

Mr. Cohen: That is what I am trying to get at: What is the theory on which they excluded it in that schedule, because it is important that we know; the words "Balance Security Account" may mean one thing or another thing, and I want to find out what they do mean.

The Referee: The question is merely as to why he eliminated certain items; why he eliminated the charge backs when arriving at this balance, and the theory on which he did it. Now, he did it probably on some theory of fact or law.

2177

Q. Upon what theory then did you eliminate the charge back account from the last column on page 8, headed "Balance Security Account?"

Mr. Wolf: I make the same objection to that, as being unimportant, and immaterial, and the accountant's theory does not control, but counsel's theory does.

Mr. Cohen: I submit that is perfectly fair.

2178 The Referee: It seems to me that the examination should be into the theory on which the accounts were prepared, that is, how they were prepared; what he eliminated and what is taken into consideration in making up the accounts, and not his reasons for it.

Mr. Cohen: I have asked him upon what theory the last column on page 8 of this account, which is headed, "Balance Security Account,"—for the purpose of aiding the Court in determining what this means. I

am asking him what that means, what that column means, as prepared by him. I do not know of any other question I can ask the witness to bring it out. I do not see how the Court can understand the relationship of these columns to each other unless it understands precisely what the accountant means by it. 2479

Mr. Wolf: You brought out that he did or did not include the charge backs, as the case may be. Now, the reason for it is something that I would like to argue—

The Referee: I will allow this question.

Q. (Question read as follows: "Upon what theory then did you eliminate the charge back account from the last column on page 8, headed, "Balance Security Account.") 2480

A. My interpretation of the testimony of Mr. Dockendorff that I had read was that he did not consider the overdue accounts collateral for the purpose of making a loan.

Q. Do you mean by that collateral for the purpose of making any loan at all, past or future?

Mr. Wolf: Mr. Referee, if we are going to have the accountant's examination as to the law on the situation— 2481

The Referee: I think the question is proper, but I think the answer was not responsive and ought to be stricken out. If counsel moves to strike out the answer I will strike it out.

Mr. Wolf: I am objecting to this question. It is a new question, it is making the accountants testify as to their legal knowledge, and cross examining them on the testimony that has been taken, and I do not think the accountant should be subjected to

2482 such an examination. Here is an account. Now, he can say, "Did this balance security account include such and such an item, or did you exclude it," and you can determine whether it is proper.

The Referee: He is entitled to ask him the theory and the witness should state the theory, and not the reason for adopting the theory.

Unless you want to be heard I will sustain the objection to the last question.

Mr. Cohen: I move that the other answer be stricken out and that I have a full and
2483 complete answer to my first question.

The Referee: The answer will be stricken out.

Q. (Question read as follows: "Upon what theory then did you eliminate the charge back account from the last column on page 8, headed 'Balance Security Account.'")

The Referee: Now, that only asks you for the theory, Mr. Suffern.

A. On the theory that the charge back accounts should no longer be considered good accounts.

2484 Q. What do you mean by good accounts?

A. Accounts on which no further claim was made by Dockendorff on the Schwab-Kepner Company for their collection, —as affecting the collateral account only I should say.

Q. Let me see if I understand you. You stated a short while ago that your understanding was, or the theory that you followed in preparing these schedules was, that overdue accounts which were charged back were to be held by Mr. Dockendorff as collateral for past advances, and not to be held as collateral for future advances; and now you testify, as I understand you, there was collateral on which

Mr. Dockendorff was to have no further claim at all. Which do you mean? 2485

A. I do not recall having testified the way you first stated in the question.

Q. Now, does the column on page 8, "Balance Security Account," represent all of the security which Mr. Dockendorff was supposed to hold on a particular date, including all of the security which he held, upon which he did not calculate to make any further advances, but which he held for past advances?

A. I do not know why he held them.

Q. I am asking you upon what theory—

A. You are telling me why he held them, and asking me to answer that, Mr. Cohen. 2486

Q. Does this item, this column here, "Balance Security Account," represent all of the security regardless whether or not on any particular date the loan balance was in such shape as to make advances upon any portion of the security?

Mr. Wolf: I think the simple question would be to ask the witness what that column contained, what it represented, before he asks the detailed questions as to what it does not contain.

The Referee: I think that is going outside of the province of your examination. He has shown the theory on which he has eliminated these things, and the answer to your question is perfectly obvious from that standpoint. You claim you are entitled to consider the charge backs as collateral and that they are not entitled to further advances based on them. Whatever Mr. Wolf's contention may be I do not know, but the only question the witness can testify to is 2487

2488 as to the theory on which the figures are made. The objection is sustained.

Q. Does the column "Balance Security Account" include on each specific date the accounts which Mr. Dockendorff received, which you call the charge backs?

Mr. Wolf: I object to that because the witness has already answered that it does not, several times.

The Referee: Objection sustained.

Mr. Cohen: I do not think that has been answered.

2489 The Referee: He has said it was not included in that.

Mr. Cohen: Does your Honor understand he testified that?

The Referee: I do.

Q. Have you in these schedules any schedule showing on each date how much in charge backs Mr. Dockendorff held on that particular day?

A. No.

Q. Now, taking the first column of page 8, what does "XC Schedules" mean?

A. The amount of the accounts that were marked

2490 "XC" on the collateral schedules.

Mr. Wolf: Produced by Mr. Dockendorff?

Witness: Yes.

Q. Are those amounts included in the so-called "Balance Security Account," in the last column of page 8?

A. They are only included if they had not been paid during the same week.

Q. I mean from week to week are they included?

A. They are.

Q. And are we correct then in understanding

that you excluded from the last column on page 2491
8 the charge backs and included the "XC" schedule appearing upon the schedules?

A. Yes.

Q. Now, will you please tell us upon what theory you included one and excluded the other?

A. The XC Schedules show the XC accounts originating in the week shown on the schedule, the charge backs were excluded and were past maturity.

Q. Is that the best answer you can make?

Mr. Wolf: I do not know whether he has finished yet.

Mr. Cohen: I beg pardon. I thought he 2492
had.

Witness: As to the XC schedules alive, they were treated as being in existence until they were paid, secured, or some other account given, or were ultimately charged back by Mr. Dockndorff.

Q. Now, turning to Exhibit B, part one on page 6, column F, you have a statement, "Remittances from S. K. Co. in settlement of accounts receivable charged back, amounting to $74,631.41," what does that schedule mean,—that column mean?

A. That column represents the sum of the col- 2493
lections, the sum of the amounts remitted by Schwab-Kepner Company to Dockendorff, apparently by their own checks.

Q. Where did you get the idea that those remittances were by the Schwab-Kepner Company's own checks?

A. By the statement on the remittance sheets

Q. And what statement was that?

A. "Paid by Schwab-Kepner Company" or "Paid by S. K. Co." or something to that effect.

2494 Q. As a matter of fact did you see any Schwab-Kepner Company checks for such remittances?

A. I did not.

Q. Did you have access to the Schwab-Kepner Company check books?

A. I don't know.

Q. Did you ever examine the Schwab-Kepner Company check books to ascertain whether actual checks were sent for such remittances?

A. I did not.

Q. How did you know then, when you prepared these schedules, whether it was anything more than a bookkeeping entry?

2495 Mr. Wolf: I object to that question. The witness has taken the records produced by Mr. Dockendorff and taken what they show Now, it may have been a bookkeeping entry, but I don't know how he can testify to it. He said he assumed that they meant what they—

The Referee: He said that these were payments made by the Schwab-Kepner Company, presumably by their own check and he was asked what makes him think that and he says by a certain memoranda on these sheets. He has made that assumption.

2496 Q. By memoranda you mean the remittance sheets?

A. I don't know to what expression of mine you are referring.

Q. I am referring to your statement that you inferred from a certain memoranda on certain of the exhibits that these were checks of the Schwab-Kepner Company to J. E. Dockendorff & Company.

A. I said certain memoranda on the remittance sheets.

Q. But you do not pretend to say as to whether

or not those represented actual checks forwarded 2497
by the Schwab-Kepner Company to Dockendorff?

A. I don't know what it is other than the statement on the remittance sheet.

Q. So far as you know those amounts might have been deducted from the loans made by Dockendorff on that especial day, might that not?

Objected to: objection overruled.

A. I don't know anything about it.

Q. And was there anything on that record to indicate that those checks might not have been the very checks received from the debtors for those accounts?

A. Yes. 2498

Q. What was that?

A. The remittance sheet would be divided into two parts, the first part apparently representing amounts received from the debtors then there would be a space and then there would be "Paid by Schwab-Kepner Company" or "Paid by S K Co." or something to that effect, and then there would follow a second set of invoices apparently paid by Schwab-Kepner to Dockendorff as shown by his account current.

At this point a recess was taken until two 2499
twenty o'clock in the afternoon.

After Recess.

PHILLIP S. SUFFERN, resumes the stand.

Further cross examination by Mr. Cohen:

Q. Now, Mr. Suffern, in the schedules do you credit or charge Schwab-Kepner Company with these overdue accounts or charge backs, as you call them?

A. I did not attempt to do either one.

2500 Q. In the schedules which you prepared—

A. I could say that I did not do it.

Q. On page 6, Exhibit B, part one, take the column headed "Accounts receivable charged back to S. K. Company by J. E. D.," is that a credit column or a debit column?

A. It is neither one.

Q. Now, take column F "Remittances from S. K. Co. in settlement of accounts receivable charged back;" is that a debit or a credit column?

A. To Mr. Dockendorff or to Schwab-Kepner?

Q. To Schwab-Kepner.

A. A credit column.

2501 Q. So Schwab-Kepner Company are credited with that?

A. That is right.

Q. In that column. And how does it affect Mr. Dockendorff is it a credit or a debit column?

A. It is a charge against Mr. Dockendorff.

Q. Now, in the accounts receivable charged back to Shewab-Kepner Company, in any of these schedules do you charge Mr. Dockendorff with these accounts receivable?

A. Each exhibit is prepared for the purpose of showing a different part of the transaction.

2502 Q. No, but you can answer my question. You can answer that.

Mr. Wolf: It might be neither one or the other.

Mr. Cohen: Then he can say so.

Witness: I don't to either one.

Q. Will you please explain upon what theory you could credit the Schwab-Kepner Company with the remittances for these charge back accounts without charging them with the charge back accounts, or crediting them with the charge back

accounts and charging them to Mr. Dockendorff when they are charged back. 2503

A. Will you please read the question?

Q. (Last question read.)

The Referee: I think the last part of that question may be a little confusing.

Witness: It is confusing to me.

Q. You have stated that in some of the schedules here you have credited the Schwab-Kepner Company with the remittances from charge back accounts. Now, if the charge back accounts were originally held by Mr. Dockendorff and turned back to the Schwab-Kepner Company, would there not 2504
be in your schedules for those charge back accounts a column crediting Mr. Dockendorff for the return of such charge backs and charging the Schwab-Kepner Company with them to offset the credit to the Schwab-Kepner Company for the remittances from those accounts?

A. No, sir.

Q. Why not?

A. Because one is merely a book figure representing an assigned account. The other is an actual remittance which goes to Mr. Dockendorff. The collateral, as collateral, does not affect the account current in any way, but all amounts paid to 2505
Schwab-Kepner Company are shown as a charge against them. The amounts that they turn over to Mr. Dockendorff are shown as a credit.

Q. Then are we to understand that you have nowhere made a debit and credit account of collateral as collateral?

A. No.

Mr. Wolf: What do you mean by "No?" You mean that you may have?

Witness: I mean that I have.

2506 Q. Well, in the debit and credit account of collateral, did you credit in the first instance the Schwab-Kepner Company with the overdue account, before it becomes overdue, and charge that collateral to Mr. Dockendorff?

A. Yes.

Q. Now, when it becomes an overdue account and you find it in the pink slips, do you credit Mr. Dockendorff with the collateral and charge it to the Schwab-Kepner Company?

A. As collateral, yes.

Q. Now, when the remittance comes down for that charge back, how do you treat it in these
2507 schedules?

A. All the remittances that were sent to Mr. Dockendorff are charged to his account.

Q. Are charges against him and credits to Schwab-Kepner Company?

A. That is right.

Q. So, taking the two schedules together, Mr. Dockendorff is charged on the collateral account with the return of the charge backs and charged again with the remittances for those accounts as they come in.

A. The two as separate charges have no relation to each other.

2508 Q. But that is the fact. So far as these schedules are concerned, you charge Mr. Dockendorff in the collateral account with the charge back accounts, and you charge him with the cash again, with the remittances he receives for those charge back accounts.

A. That is right.

Q. Did you, in preparing these schedules on page 8 in the last column, deduct any amount for accounts receivable held by Mr. Dockendorff which were cancelled by reason of the failure of the bleacheries to ship the goods?

A. It may have so happened.

Q. Don't you know?

A. It did happen. 2509

Q. Then are we to understand that this last figure, 445762.78 on page 8, includes all accounts subsequently cancelled by the failure of the bleachery to ship the goods?

A. Do you wish yes or no to that?

Q. I would like to have it if you can answer yes or no. Answer it yes or no and I will ask you for a further explanation?

A. I don't know.

Q. So that you cannot tell us to-day that these schedules in the last column of page 8 show the actual security which Mr. Dockendorff held as the 2510
result of cancellations or failures on the part of the bleachery to ship the goods?

Mr. Wolf: I object to that as incompetent, irrelevant and immaterial, and not the subject of this examination. This witness can only testify to what the papers which Mr. Dockendorff has produced,—what these exhibits purport to show.

The Referee: I suppose the question is intended to be limited to the information he obtained from the records which he has testified he examined, isn't it?

Mr. Cohen: Yes. I am trying to show 2511
what the schedules include and what they do not include. I am not attacking the witness on this point. I am elucidating the schedule so that the meaning is clear.

The Referee: The whole examination is directed to information which the witness derived from the books which he examined, and records.

Mr. Cohen: Some of which are not in the evidence at all.

2512 The Referee: You have that in mind all the time?

Witness: Yes.

Last previous testimony read.

The Referee: Do you want to qualify or explain your answer, "I don't know" in the previous question?

Witness: I am willing to let it stand.

Q. (Last question read.)

A. I do not think Mr. Beckenderff held anything as a reason for cancellation or failure of shipment.

2513 Q. What I am getting at is this, Mr. Suffern: In these last figures which you have here, outside of the overdue accounts or charge backs, have you included all of the accounts receivable assigned to Mr. Beckenderff and outstanding on that particular date, regardless of anything that may have happened as to the mills, affecting these accounts receivable?

A. No.

Q. Have you deducted them, all accounts receivable which, by reason of anything that happened at the mills, were not collectable by Mr. Beckenderff?

2514 A. As revealed by the books I examined, yes.

Q. Now, what books reveal these facts?

A. The memoranda of credit allowances, credit returns that were shown on remittance sheets sent to Mr. Beckenderff by Schwab-Kepner Company.

Q. Outside of these credit returns shown on those sheets—

A. There are not the pink sheets.

Q. But on the remittance sheets?

A. Yes.

Q. Outside of the credits on the remittance sheets did you make any deductions from the ac-

counts receivable as shown in the last column of page 8?

A. No.

Q. Did you make any deduction for approximately $120,000 of accounts receivable which fell shortly before the filing of the petition in bankruptcy? 2515

Mr. Wolf: I object to that as assuming something that is not shown.

Mr. Cohen: I am asking him whether he made a deduction of that character. That does not assume the fact.

The Referee: Ask him if he found any such information from his examination of these records. 2516

Q. From your examination of these records did you find deductions amounting to as much as $120,000, within a very short time prior to the filing of the petition in bankruptcy?

Mr. Wolf: I would like to have counsel define what they mean by "a very short time."

Q. Within two weeks of the filing of the petition in bankruptcy?

A. It was not shown by the records I examined. 2517

Q. Was your attention called to any such circumstance?

A. I was indirectly aware of it.

Q. How did you become aware of it?

Mr. Wolf: I object to that.

Objection overruled.

Mr. Wolf: And I move to strike out "I was informed of it."

The Referee: He said he became "indirectly aware of it."

Mr. Wolf: I object to the question as

2518 calling for a conclusion and as calling for information which may be confidential.

I object to it as incompetent, immaterial and irrelevant and not the proper subject of the examination of this witness at this time, which is merely for the purpose of finding out what these figures show.

Mr. Cohen: The question is withdrawn for the present.

Q. Did you include that amount or did you deduct that amount from any of the figures before producing the balance shown in the last column on page 8?

2519 A. No.

Q. So that if there are such deductions to be made, in order to ascertain the actual security which Mr. Beckenhorst held on these particular dates, it would be necessary to make the deductions for any such cancellations of accounts receivable?

A. Is that question intended to mean during these last two weeks or for the full period?

Q. During the last two weeks whenever the cancellations were made.

A. If it is whenever, this schedule is complete. If it is the last two weeks it is not included.

2520

Q. You mean that the cancellations made during the last two weeks before the failure would not be deducted from the figures appearing in this last column, but that if the cancellations appeared on the remittance sheets which you held, they would appear as deducted in this last column?

A. Now, the question is clear.

Q. That is your understanding?

A. Yes.

Q. So that the two figures on page 8, last column, amounting to $474,000, in round figures, and $115,000 is a figure subject to the deduction

of whatever the cancellations amounted to, occurring during that period. 2521

Mr. Wolf: Meaning in addition to those shown on the remittance sheets?

Mr. Cohen: No, in amounts less than that.

Mr. Wolf: I object to that question as being an improper assumption from the testimony. The testimony is that whatever cancellations, credit allowances, appeared on the remittance sheets, were taken into consideration here whenever they appeared.

Witness: That is right.

The Referee: We said the deductions during the last two weeks did not appear. 2522

Mr. Wolf: We don't know that there are any.

The Referee: Now, what is the question?

Q. So that, in order to get an accurate figure of securities held by Mr. Deckendorff at those periods, any cancellations of accounts receivable not appearing on the remittance sheets which you have would have to be deducted from those figures; is not that correct?

Mr. Wolf: I object to that portion of the question which says that in order to get an accurate estimate such a deduction would have to be made. I haven't any objection to his asking this question, "that if any later deductions ..." 2523

Mr. Cohen: I consent to that amendment.

A. If not, those deductions would have to be made from the figures shown.

Q. Now, did you prepare these figures in the last column on page 8, being Exhibit C, for the purpose of showing the actual security which Mr. Deckendorff held at that particular time, or

merely for the purpose of showing certain computations which you made from certain data which you had before you?

Mr. Wolf: I object to that question. I haven't any objection to counsel asking the witness what each item represents. Now, that is getting down to reasons and theories again which I have objected to before, which I think ought not to be allowed to go into evidence, because I don't know that Mr. Suffern's theory is the same as the Trustee's theory, or the Trustee's counsel's theory.

After argument.

Objection sustained.

Mr. Cohen: I am entitled to show, I think, whether or not these schedules are prepared for the purpose of furnishing you with a computation of the actual security on hand, or with a purpose of furnishing you with a computation from certain data, so that your Honor, when you read the schedules, will know whether or not the words "Balance Security Account" at the head of the column on page 8 represents an item of value for the purpose of comparing at respective dates, or whether or not it merely represents the computation of certain other items, certain deductions and additions, so that before you can use that figure as a basis of comparison, you will have to make those deductions for yourself.

The Referee: I think that it appears. It appears that if there were such deductions to be made they were not shown by these schedules.

Mr. Cohen: All right, sir.

Q. Did you have access, Mr. Suffern, to all of 2527
the records of the Schwab-Kepner Company?

A. No.

Q. Were you denied access to any that you asked for?

A. No.

Q. Did you ask for records which would show anything concerning this $120,000 of accounts receivable that you became indirectly aware of?

Mr. Wolf: Objected to as incompetent, irrelevant and immaterial and not the proper subject of examination of this witness at this time.

Objection overruled. 2528

Mr. Wolf: Then may we ascertain how, if at all, this witness became aware of certain information?

The Referee: That is something you objected to.

Mr. Wolf: Mr. Cohen withdrew that.

Mr. Cohen: You objected to it.

Mr. Wolf: I think counsel should be allowed to ascertain how he became indirectly aware of it, if the Referee overrules the objection. Mr. Cohen is making the witness his witness.

The Referee: He is ascertaining the wit- 2529
ness' method in making up this statement.

Mr. Cohen: Then may I ask preliminarily for the purpose of making the objection as to how he became aware of that situation if at all?

The Referee: I do not see what reason you have for interrupting Mr. Cohen's examination.

Mr. Wolf: If it appears that was a statement made by counsel for the Trustee, I

2530 am going to claim that was a privileged communication; that a communication made by counsel for the Trustee to his own public accountant is privileged.

Mr. Cohen: I take it that if any such privilege exists, as to which there is grea doubt, it is waived by the presentation of the witness on the stand to verify the communication he intends to put in as an exhibit.

I do not think I ought to be interrupted in my examination.

Objection overruled.

2531

Q. Last question read as follows:

"Q. Did you ask for records which would show anything concerning this $120,000 of accounts receivable that you became indirectly aware of."

A. I did not become aware of that amount.

Q Did you ask for any records concerning the amounts that you did become aware of?

A. Yes.

Q. What did you ask for?

Mr. Wolf: Let him fix who he asked. I believe that ought to be done so if we want to meet the situation. I want to know with whom the conversation was held, whether it was somebody who had authority to speak.

2532

The Referee: I think you should show of whom he got it.

Q. Of whom did you make the request?

A. Mr. Williams.

Q. And did you get that information from Mr. Williams?

Mr. Wolf: I object to that as immaterial, incompetent and irrelevant, unless it be

shown that Mr. Williams had some authority to make a statement that would be binding on the Trustee. 2533

Objection overruled.

A. No.

Q. Did you ask Mr. Wolf or the Trustee for an opportunity to secure the data concerning those accounts?

Mr. Wolf: Concerning which?

Mr. Cohen: The accounts which were cancelled during the last two weeks, that were not shown on the remittance sheets.

A. No. 2534

Q. Then are we to understand Mr. Suffern that the few words at the beginning of your report on the first page "In accordance with your instructions," means in accordance with certain limited instructions that you received concerning the work that you were to do?

A. Yes, sir.

Q. That is to say, you were not given the freedom that an accountant is usually given to make a complete and exhaustive investigation into all the sources he might need for the purpose of making up a report, and you were limited to those particular things that were furnished to you and to the particular lines of work you were to do? 2535

Mr. Wolf: I object to the words "is usually."

Objection overruled.

A. The way the question is framed, if I say "Yes, sir" or "No, sir" I am stuck either way.

Q. Answer it in your own way.

A. I was given absolute authority to get all the information available on limited subjects. I was not to make an examination of everything that

2536 happened between everyone. The transactions between Schwab-Kepner Company and Dockendorff, is shown primarily by the exhibits submitted to us.

Q. Were you directed or instructed to ascertain the actual condition of the collateral held by Mr Dockendorff during the last two weeks preceding the failure?

A. As far as was possible, yes.

Q. Then why did you not procure all of the data that would enable you to determine that fact?

A. Because the books and records failed to show
2537 the facts the counsel for the Trustee desired me to submit to him.

Q. And by the books and records you mean what?

A. The exhibits submitted to me by this Court and all the records of the Schwab-Kepner Company that I examined.

Q. I think you have testified that you did not examine all of the records of the Schwab-Kepner Company.

A. I don't know whether I testified to that fact, but I did not.

Q. And none of the records of the Schwab-Kep-
2538 ner Company that you did examine were exhibits in this Court?

A. That is so.

Q. Did you examine all of the records of the Schwab-Kepner Company and all of the books of the Schwab-Kepner Company which you understood had any bearing on the Dockendorff transactions?

Mr. Wolf: I object to that. Let him state what he did examine.

The Referee: He has stated what he did examine, I think.

I think it is proper to show whether he 2539
had knowledge that there were any other records.

Mr. Wolf: That is not what the question asks for. The question should be, did he know of any others.

Q. (Last question read.)

Objection overruled.

A. No.

Q. Now, on page 2 of your report you state, "In the preparation of the collateral account, Exhibit C, all 'credit overdue,' was considered as being a cancellation of collateral for which the 2540
account had been charged to the Schwab-Kepner Company by J. E. Dockendorff." Is that a true statement of the theory which you followed in the preparation of the collateral account?

A. In respect to credit overdues?

Q. Yes.

A. Yes.

Q. Did you follow that theory throughout all of your schedules?

A. Yes.

Q. Did you arrive at that theory solely from an inspection of the exhibits that were submitted to you?

2541

The Referee: That is without regard to the Schwab-Kepner Company books?

Mr. Cohen: Yes.

A. Yes.

Q. And without reference to any other exhibits, not in evidence, or without reference to any other information that you had?

A. Yes.

Q. You took the exhibits as they appeared upon their face, drawing that inference stated in your

2542 report, and followed that inference throughout the preparation of your schedules?

A. Yes.

Q. And were you instructed so to do by your client?

A. No.

Q. Did you confer with your client before doing so?

A. No.

Q. Did you ask your client for an opportunity to verify that theory by any other or secondary examination?

A. No.

2543 Q. Did you examine the Schwab-Kepner Company books for the purpose of determining whether or not that theory was supported by any of the entries in their books?

A. No.

Q. Now, in the exhibits submitted to you that were introduced in evidence here, that represented tabulations as of various dates, did you utilize those exhibits in preparing your report and schedules?

A. One of the tabulated results.

Q. Which one?

A. The August first list of collateral outstand-
2544 ing.

Q. And did you compare that tabulation with the other exhibits including the remittance sheets and the collateral sheets?

Mr. Wolf: I object to this line of examination at this time, which is merely, as I understand it, for the purpose of ascertaining the theory on which this account is to be in evidence, not a general examination. If this account is once in evidence, I understand they have a right to examine generally, but now, there is

no reason why they should use, in this adroit manner, the examination of this witness to fish around and find out something. 2545

After argument.

Objection overruled.

A. In part.

Q. Well, then, did you make any examination for the purpose of determining whether that exhibit was accurate as containing deductions or entries from the other exhibits?

A. As a beginning figure, I accepted the collateral schedule of August 1st, as correct. By examining the remittance sheets subsequent to that date I found omissions had been made in the August first collateral list, and such changes as affected the August first collateral list and shown by the records subsequent to that date, was considered in preparing the collateral shown under August 1st, 1910, as shown by Exhibit D, page 9 of the report. 2546

Q. Is the Exhibit D the corrections or adjustments which you made as the result of your comparison between the collateral schedules, remittance sheets and the schedules showing the condition of the account of August 1st, 1910?

A. Yes. 2547

Q. In what respect did you find that the collateral sheets and remittance sheets differed with the August 1st, 1910, schedule prepared therefrom?

A. I did not examine all of the collateral sheets, therefore, I cannot answer that question.

Q. The collateral sheets subsequent to August first, I mean.

A. The collateral sheets subsequent to August first, did not affect it.

2548 Q. The remittance sheets subsequent to August first.

A. The remittance sheets subsequent to August first, would show the payment of accounts in existence before August 1st, which were not included on the last statement submitted by Mr. Dockendorff therefore, whenever I found one that was paid, that had not been on that list, I included it as belonging on the list of August first.

Q. So you added to the total collateral as shown by the August first schedule to the extent of those remittances which subsequently disclosed that the collateral was held on August
2549 first?

A. Remittances and credits, yes.

Q. And how much did that amount to?

A. $6,888.45 and $5,574.39, $12,462.84.

Q. I think you misunderstood the question. (Question read.)

A. I added to the amount of the schedule, $1,311.06.

Q. And that was in addition to the amount of collateral, which upon the face of the exhibit showing the condition of the account August 1st, 1910, appeared to be the collateral held by Mr Dockendorff?

2550 A. Yes.

Q. In other words, you found by a comparison of the exhibits constituting the remittance and collateral sheets, that there should have been this amount added to the collateral appearing on the exhibit sheet which was intended to be a summary of the condition on August 1st, 1910?

A. No, sir.

Q. Well, the total amount of collateral which you found was disclosed by the collateral and remittance sheets to be held by Mr. Dockendorf on the first of August, 1910, was how much?

A. As disclosed by the exhibit and remittance 2551
sheets was a net of $341,123.91.

Q. Now, what was the figure as shown by the exhibit which Mr. Dockendorff prepared?

A. $339,809.85.

Q. What was the figure of the collections realized from the $341,123.91, subsequent to August first?

A. $178,781.64.

Q. And what was the amount as shown by the exhibit which Mr. Dockendorff prepared?

A. $171,960.74.

Q. So that the result of your examination showed that Mr. Dockendorff got approximately, 2552
in round figures $7,000 more on the security which he held on the first of August, 1910, than was shown by the exhibit which he prepared?

A. In part.

Q. What do you mean by "in part?"

A. Because you have not included the amounts that I added to that list, which helped to produce the $178,781.64.

Q. And what was the addition that you added to that list?

A. The addition in security was $6,888.45.

Q. And from that did you deduct anything?

A. We deducted the invoices of August first, 2553
possibly first and second, which Mr. Dockendorf had included on the list of August 1st, which I understood represented the accounts at the beginning of August first.

Q. Now, where will we find in your report a statement of the collateral which you found from the exhibits Mr. Dockendorff held on the first of August, 1910?

A. The August first collateral list which is not included on this report plus the items missing from that report shown on Schedule 7 of this

2554 report, minus the invoices included on that list of August first, which are also included on the separate collateral schedules of this report as shown by Schedule 8.

Q. What is the figure at the head of the last column of page 8, Exhibit C of your report?

Mr. Wolf: I object to that, because the paper will show for itself when it is in evidence, and it is not cross examination as to the method or as to the accuracy of this report.

I don't know whether this is an adroit
2555 way of getting excerpts of this accountant's report in evidence or not, but it is attempting to include the balances. If I were told at this time that these reports could go in evidence—

The Referee: Mr. Cohen asks what does the figure represent.

A. The amount of security in Mr. Deckenhoff's possession August first, according to the records examined by me.

Q. Did that include any charge back accounts?

Mr. Wolf: I object to that, we have
2556 gone over that several times.

Mr. Cohen: We have not gone over it as to this particular feature.

Mr. Wolf: We have gone over every feature of it.

Mr. Cohen: The question was referring to that first figure and I want to give him an opportunity to correct his testimony as to that.

The Referee: Objection overruled.

A. I don't know.

Q. So you cannot say as to the first figure in

the last column of page 8, whether or not that includes the charge back accounts or not? 2557

A. Prior to August first.

Q. You cannot testify as to that?

A. No.

Q. And you don't know whether that item includes any of the charge back accounts which were charged back prior to the first of August, 1910?

A. No.

Q. But you do know that the item succeeding that, you know as a fact that the items following that in that column do not include the charge backs?

A. That is right. 2558

Q. Subsequent to August first.

A. Excepting any amounts which you add in that August first balance.

Q. Well, then, without the information that would enable you to tell what is included in the August first figure in that column, there is no standard of comparison between that figure and the last figure in the column, is there?

Mr. Wolf: I object to that. The evidence shows which were and which were not included and which items did or did not include the charge backs. 2559

The Referee: I think that is true. I think we can draw our own inferences as to comparison.

Question withdrawn.

Q. Did you intend to prepare Exhibit C, page 8, last column so as to show a comparative statement of the condition of the collateral account between the various dates mentioned in the first column of that page?

Mr. Wolf: I object to that as beyond

2560 the proper sphere of this limited cross examination.

Objection overruled.

A. Yes, sir.

Q. You do not claim, do you, Mr. Suffern, that without knowing what the first figure of August first contains and whether or not it contains the overdue or charge back accounts, that you have as a matter of fact prepared a schedule showing something that can be ascertained between the first item and the last?

Mr. Wolf: I make the same objection
2561 to that, that that is not within the sphere of this limited cross examination.

Objection overruled.

A. For comparative purposes I believe that the schedule is of some value.

Q. You think it is of some value as comparing the first entry with the last, the first item on the last column of page 8 with the last item on that page?

A. In connection with the rest of the report, yes.

Q. You think it is fair to compare the so-called "Balance Security Account" on the first of
2562 August, which you don't know whether it contains charge backs or overdues, with an item on November 27th, as to which you do know that it does not contain the charge backs or overdues?

Mr. Wolf: I object to that as not within the sphere of the limited cross examination.

Objection overruled.

A. I think it calls for an assumption that I have never given.

Q. What is the assumption it calls for that you have never given? 2563

A. That there is no overdue not deducted from the remaining total.

Q. Now, do you claim that the overdue accounts and the charge backs are included in any of the items appearing in the last column of page 8?

A. No, sir.

Q. Then, assuming that they do not appear in any of the figures below the first figure, and assuming that you do not know what the first figure represents, do you think it is fair to compare any of the other figures with the first one? 2564

A. It depends on whether you have isolated the figures or whether you consider the other part of the report.

Q. Taking these isolated figures, the first figure which purports on your schedule to show the condition of the collateral on the first of August, 1910, and comparing it with the last figure in the column, which purports to show the condition of the collateral on the 28th of November, 1910, I ask you whether you have furnished us with the proper basis of comparison in this report?

A. With the understanding of how the original figure was arrived at, I do, a relative comparison. 2565

Q. But you don't know to-day whether or not the first item appearing on that column includes the charge backs or not?

A. No.

Q. Have you made up any schedule of details making up the last figure in the last column of Exhibit C, page 8?

Mr. Wolf: I have surrendered the temporary examination of Mr. Suffern with the understanding on my part that the

2566 witness was to be interrogated concerning the theory on which these figures were prepared.

Mr. Cohen: I am not attempting any general examination.

After discussion.

Question withdrawn.

Q. Is the last figure on the last column of page 8 supported by any schedules or details contained in this report which has been offered in evidence?

A. Not a balancing support.

Q. Where does that figure come from?

2567 A. Accepting the corrected August first list, adding to it all collateral assigned subsequent to that date, crediting against that amount of remittances merchandise returned and charge backs, produces this balance.

Q. And where is that process done in this exhibit here?

A. You understand the origin of the original figure?

Q. Yes.

A. The remainder is on the large statement before you, and the total charge to the security account—

2568 Q. Where is the total charge to the security account?

A. That is in the third column from the left of Exhibit C.

Q. And that is made up, is it not, of the first and second columns?

A. Yes.

Q. And that includes the XC collateral and the schedules of collateral which are in evidence?

A. It does, as summarized in this large exhibit.

Q. Then, the next column, then, refers to re- 2569
mittances, does it?

A. It does.

Q. Now, where did you get those figures from?

A. The remittance sheets.

Q. Is there any tabulation of that annexed to that exhibit?

A. There is.

Q. Where does it appear?

A. On pages 69 to 74 of the report.

Q. And do those remittances include remittances on accounts, which are called charge back accounts?

A. They may. 2570

Q. You don't know?

A. If they were paid, they do.

Q. So that in Column A of Exhibit C of page 8, we have all of the remittances including remittances on account of accounts charged back, as well as accounts that are not charged back?

A. Not necessarily.

Q. Why not?

A. In the eighth column, under "Cash" are included accounts which according to the remittance sheets were probably paid by S. K. Company.

By the Referee: 2571

Q. On charge back accounts?

A. Presumably.

By Mr. Cohen:

Q. And are those included in the column headed "A?"

A. They are not included.

Q. So that to ascertain the total amount of remittances from the Schwab-Kepner Company as disclosed by the exhibits, we must add together the items appearing in column A, which is the

2572 fourth column in Exhibit C, page 8, with the items included in the column under "Cash," which is the eighth column in that exhibit?

A. No, sir.

Q. Why not?

A. Because in Exhibit B, part one, we find in the last column remittances from customers and remittances from Schwab-Kepner Company added together making the total remittances, plus some cash.

Ajourned until Wednesday, March 22, 1911, at ten-thirty o'clock in the forenoon at the same place.

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UNITED STATES DISTRICT COURT, 2565

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, Special Master, at No. 165 Broadway, New York City, on Friday, March 24th, 1911 at 10.30 A. M. 2577

PRESENT:

JULIUS HENRY COHEN and GIRARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF, Attorney for Receivers.

Mr. Wolf: We would like to have it put upon the record that Mr. Dockendorff is unable to find and produce the resignation of Mr. Williams which Mr. Williams sent to him according to Mr. Williams' testimony. 2577

Mr. Cohen: Our statement with regard to that, Mr. Referee, is that Mr. Dockendorff understood that it was a pencil memorandum and he had made a search for that memorandum and could not find it.

Mr. Cohen: With the understanding that I reserve the full right to cross examine Mr. Suffern and subject to a motion to strike out in case the papers and books utilized by the accountants for the purpose of making up their report as appears from the testimony and the other data upon which he relied are

2578 not put in evidence and of course upon the understanding that we are not bound by any theories of the accountant, I make no objection to the exhibits upon the ground of their incompetency, immateriality or irrelevancy.

Mr. Wolf: I offer in evidence the report of Suffern & Sons, dated February 21st 1911, and the analysis of the collateral schedules showing advances and charges of merchandise against the same from August 1st to November 29th, 1910.

Received in evidence and marked respec-
2579 tively R501 and R502, March 24th, 1911.

PHILLIP S. SUFFERN, recalled.

By Mr. Wolf:

Q. The reports made by you Exhibits R501 and R502 purport to be compilations of what records examined by you?

Mr. Cohen: I think that was covered on my preliminary examination at pages 966 and 967.

Question withdrawn.

2580 Q. Mr. Suffern is it not the fact that the only books, records, papers and documents examined by you upon which your reports are based and which are not in evidence themselves were the sales books of the Schwab-Kepner Company and the sales orders and the charge slips of the Schwab-Kepner Company?

A. Yes.

Q. Please state what information in your reports is based upon data which you secured from the sales books of the Schwab-Kepner Company and the sales orders and charge slips of the Schwab-

Kepner Company and that does not appear in the 2581
papers that are in evidence?

A. The dates appearing in these records, apparently indicating the dates of shipments.

Q. On what pages of your reports do the dates of shipments appear?

A. On pages 23 to 60 inclusive.

Q. On pages 23 to 25 they appear under the column headed what?

A. Paid open accounts receivable August 1st, 1910 in which shipment of merchandise—I will correct that, they appear under the column headed "date shipped."

Q. That is the third column of the schedule, is 2582
it not?

A. It is the third column exclusive of the page and name.

Q. Now, do I understand your testimony to be that the only data on pages 23 to 25 inclusive appearing in your reports not obtained from the exhibits in evidence is the data under the column date shipped?

A. No, sir.

Q. What other data?

A. Under remarks there are a few notations obtained from the shipping orders.

Q. Which also are not in evidence? 2583

A. Which also are not in evidence.

Mr. Cohen: Then does the witness desire to correct his testimony previously given in which he said that the only records and documents not in evidence were the sales books, sales orders and charge slips?

A. No, sir.

Q. From what data do these remarks appear?

A. The only remarks that appear from the rec-

2584 ords not in evidence were obtained from either the sales books or the shipping orders.

Mr. Cohen: These shipping orders are not in evidence are they?

A. No, sir.

Q. Well, you testified on page 966 that the only papers you examined not in evidence were the sales books, the sales orders and the charge slips; now which is correct?

A. If I used the word shipping orders in my previous answer it should be changed to sales orders.

Q. You did say sales orders—sales books, sales
2585 orders and charge slips.

A. Those are the only ones.

Q. Where does this information under the column of remarks appear; in what paper; in the sales books, sales orders or the charge slips?

A. All remarks that appertain to a shipment or housing of material came from either the sales books or sales orders. Sometimes one and sometimes the other.

Q. Are you using sales orders and shipping orders synonymously?

A. If I have used shipping order I have used it synonymously with sales orders. The technical
2586 terms on their books were sales orders.

Q. Now, take page 26 of your report; what information on that page was not obtained from the papers in evidence?

A. The date shipped, appearing in the fifth column.

Q. Now the schedule marked A3, pages 27 to 60 inclusive; what information appears on those pages which was not obtained from the exhibits in evidence?

A. The information contained in the fifth column under the heading dates shipped.

Q. Have you then given all of the information 2587
contained in your reports which was not obtained by you from the exhibits in evidence?

A. No, sir.

Q. Now, point out anything else obtained by you from an exhibit not already in evidence.

A. The information shown on pages 10 to 15 inclusive in the fifth and six columns, and also under remarks.

Q. What is the fifth column?

A. Shipped by American Shirt Company.

Q. From what records not in evidence was that information obtained?

A. It usually appeared on the sales orders. When 2588
it was not shown there it would have been shown in the sales journals.

Q. Have you now given everything that appears in your report which was not taken from the exhibits already in evidence?

A. To the best of my recollection, yes, sir. I would like to make a correction on those sales orders.

Q. All right, go ahead.

A. I realize as I see these that there is a distinction between the sales orders and the shipping orders. The white slips, from which the bulk of the shipping dates was obtained were called shipping orders and the sales orders were other colored 2589
sheets.

Mr. Cohen: Then you haven't used those terms synonymously?

A. No, sir.

Q. The dates shown in the shipments of the goods, do they appear on the shipping orders or where?

A. On the shipping orders.

Mr. Wolf: On the dates of the shipments we will probably be able to check up and

2590 it won't be necessary to go into it further at this time.

Q. Mr. Suffern, you were asked with respect to the instructions received by you regarding the preparation of your reports and you testified in one instance that you made it in accordance with the instructions of counsel and in another instance that you received no instructions from counsel, now, which is correct?

A. I made the report in accordance with—I will make that on instructions that I received from counsel.

Q. What were those instructions?

2591 A. From memory, Mr. Wolf?

Mr. Cohen: Are the instructions in writing?

A. The instructions cover conversations and a letter to prepare various information.

Mr. Cohen: There is a letter besides the oral instuctions?

A. Yes, sir.

Q. In addition to the written instructions you also had verbal instructions?

A. Yes, sir.

2592 Q. Have you the letter with you?

A. No, sir.

Mr. Cohen: Did you get more than one letter?

A. About what?

Mr. Cohen: Letters of instruction or suggestion of any kind or character from your client to you upon which you base the preparation of your report?

Mr. Wolf: I think that is misleading.

Mr. Cohen: I understood that you were

going to present all of the instructions both oral and written that you have to your accountant so that the court might understand the theory upon which the schedules were prepared. 2593

Mr. Wolf: You are quite correct but there are certain things that Mr. Suffern hasn't prepared for me as yet and that are impossible to be prepared just now and whenever they are prepared and submitted to me I am going to submit them to you, but I don't understand that I have to make counsel for Mr. Dockendorff my confidant respecting those things which Mr. Suffern hasn't done for me. It has nothing to do with any evidence before the Court. 2594

Mr. Cohen: It would certainly help to know the theory upon which this voluminous and beautifully typewritten report was prepared.

Mr. Wolf: It would help me if I had the report of your accountant.

Mr. Cohen: I intend to submit it to you.

Mr. Wolf: You said you didn't want to do so until Mr. Suffern's cross examination is completed; it would facilitate me to have it now. 2595

Question read.

A. Only one, I think.

By Mr. Wolf:

Q. And subsequently, after these were finished, you were asked to procure some additional information not covered by those reports at all, were you not?

A. Yes, sir.

Q. In addition to the letter of instruction sent to you by counsel respecting the preparation of

2596 these reports did you also have some verbal talks with counsel as the work progressed?

A. Yes, sir.

Q. And you showed to counsel what you had done from time to time?

A. Yes, sir.

Q. Did you ever receive any instructions other than to present to the Court and counsel a complete reconstruction of the Dockendorff account?

Mr. Cohen: I object, leading and further upon the ground that the correspondence is partially the best evidence.

Mr. Wolf: Can you get that letter?

2597

A. Yes, sir.

Question withdrawn.

Q. Now, Mr. Suffern, turning to page 6 of your report can you tell us what is shown on that page?

A. The account opens with a balance shown in the account current prepared by Dockendorff, which is in evidence, as of August 1st, 1910, after deducting $19,438.99 which represents the credits that he shows as of August 1st, 2nd and 3rd. In the first column of this exhibit is given the dates

2598 covering the items which are extended.

Q. And those dates cover periods week by week?

A. Week by week.

Q. The next column shows what?

A. The total of the XC schedules week by week as it is shown in the larger schedule of the analysis of the collateral schedules.

Q. The next column is schedules open for advances?

A. It represents the schedules other than XC week by week as shown in the large schedule. The fourth column shows the weekly charge backs to

Schwab-Kepner Company by J. E. Dockendorff as 2599
prepared from the pink slips and as shown in detail in the large collateral schedule. The fifth column headed "A" represents the checks sent to the Schwab-Kepner Company as shown in detail in schedule C of this report pages 64 to 68 and as shown week by week in the large schedule; the sixth column lettered "B" shows the protested checks which were charged to the Schwab-Kepner Company by J. E. Dockendorff as shown on Exhibit P9; the seventh column lettered "C" shows interest, commissions and accountant's salary charged to Schwab-Kepner Company as shown on Exhibit P9; the eighth column headed "A B C" 2600
is the total of all the debits made by Dockendorff as shown by him in Exhibit P9; the tenth column headed "D" is the sundry cash remitted to Dockendorff shown in detail in schedule 6 of this report pages 69 to 74; the eleventh column is remittances, apparently from customers, as shown in schedule 6 of this report; the thirteenth column headed "D E F" represents the total of the remittances to Dockendorff as shown by the remittance sheets in evidence; the ninth column represents the weekly balance which is the difference between the eighth and thirteenth columns.

Q. Now, explain page 7 of the report please. 2601

Mr. Cohen: May I ask whether the letter of instruction has arrived?

Mr. Wolf: It has and I now offer it in evidence.

Received in evidence and marked Exhibit R563, March 24th, 1911.

2602 Exhibit reads as follows:

Exhibit R503.

"Hays, Hershfield &Wolf.

January 25, 1911.

In re SCHWAB-KEPNER Co.

Mr. George C. Harding.

Dear Sir—

I send you herewith letter to J. E. Dockendorff authorizing representative of Suffern & Son to examine the books of J. E. Dockendorff & Co.
2603 concerning the affairs of The Schwab-Kepner Company.

I suppose you had better have a letter from Suffern & Son to Dockendorff introducing you as their representative.

The facts in regard to the matter briefly are that Dockendorff was advancing large sums of money to the Schwab-Kepner Co. In May, 1910, he was informed that the concern was in difficulties.

As security for his indebtedness or loans, he took assignments of outstanding accounts. Under the agreements, he was to advance 80% of the net amount of each account. The discount on the
2604 accounts was 4%, so that he was to advance 80% and 96%.

Dockendorff caused a change to be made in the affairs of the Schwab-Kepner Co. He caused one Corbett to be designated as Secretary and Treasurer of the company, and his agent, to turn over the proceeds of the outstanding accounts as collected by the Schwab-Kepner Co. to him.

In the early part of June, he installed one Hardy as Director of the company, and also as bookkeeper to take charge of the books. Hardy was succeeded by one Williams, and also by a Mr.

Jones, who both continued down to the time of the receivership on the first of December. 2605

Williams discovered great confusion and disorder in the business, and between the 5th of July and first of August, discovered that the company was totally and hopelessly insolvent, and so reported to Mr. Dockendorff. Whether Dockendorff had previous knowledge that the company was insolvent, is a question involved in some doubt, but it is certain he did have such knowledge on or about the first of August, when Williams reported to him. Notwithstanding this, he continued to make advances to the Schwab-Kepner Co. on outstanding accounts. 2606

He claims now that the advances to the Schwab-Kepner Co. were coincident with the assignments to him of the accounts in other words that the transfer of accounts to him was for a present consideration.

The practice, however, seems to have been that deliveries of merchandise were made by the Schwab-Kepner Co. to different bleacheries in different parts of the United States, and Dockendorff advanced moneys on orders of the customers of the Schwab-Kepner Co., and thereafter the orders were transmitted to the bleacheries the goods shipped, and then, for the first time, the outstanding accounts came into existence. 2607

Between the 5th of July and the first of August, Williams discovered that the Schwab-Kepner Co., by reason of its careless or improper bookkeeping, had assigned to Dockendorff, and he had apparently made advances thereon, accounts which were worthless or did not exist, to the extent of $100,000 approximately. Of this, $100,000, $40,000 was probably on account of insolvent or failed accounts, and $60,000 was represented by accounts

2608 that did not exist, which situation arose in this manner:

The Schwab-Kepner Co. would have an outstanding account created, which would be assigned to Dockendorff, and he would make advances against the same. The merchandise, however, would be returned by the customer, would be resold to another customer, and a new account created, which was likewise assigned to Dockendorff, and new advance made, but no credit was passed through the books showing that the old account had been cancelled, and Dockendorff assumed that both accounts were good, and apparently made advances

2609 accordingly.

On the first of August, as I have said, the figures showed advances of $190,000 to the Schwab-Kepner Co., for which he had accounts showing an apparent equity of 20%, but as before stated, this apparent equity was wiped out by reason of the fact that $100,000 of the accounts which he held at that time as security for his debt, were worthless,—$60,000 did not exist and $40,000 were uncollectable.

At this time, Dockendorff had absolute knowledge that the Schwab-Kepner Co. was totally insolvent, and continued to make advances. The only

2610 motive which I can imagine is that he knew his account was in a precarious condition. This, however, is only an inference and remains to be proven from his books. He thought probably that, by continuing to make advances, he could straighten his account out, and absolutely clinch his security, and thus receive payment of his debt in full.

Having knowledge of the insolvency on the 1st of August, 1910, any transfer of securities by which Dockendorff bettered his position subsequent to that date would be a preferential transfer. The

following should therefore be the matters investi- 2611
gated:

1. Subsequent to August 1, 1910, was Dockendorff's security placed in better shape?

2. To what extent?

Dockendorff has already prepared a statement showing the status of his security on the first of August. The method of doing business was that Dockendorff charged back accounts that were unpaid a certain number of days after the maturity, and new accounts were substituted. We were told by Miss Walsh, who kept this account at the Schwab-Kepner Co., that $100,000 approximately 2612
of new security was substituted for the old security which would be a clear preference. Dockendorff should show you all sheets charging back accounts to the S. K. Co.

Assuming that Dockendorff knew the Schwab-Kepner Co., to be insolvent, he nevertheless had the right to continue to make advances to them and loans to them, and the security which he received could not be attacked if it were given for a present consideration, but the lien which he would have on the security would be for the amount of his indebtedness only and not as general security for indebtedness thereafter made. In other words, 2613
if after knowing the concern to be insolvent he loaned them $1,000 and took $1,500 worth of accounts, he would be protected only to the extent of $1,000 as against those accounts, and the residue of $500 could not be applied as against any other indebtedness than the liquidation of the $1,000 loan made against that specific collateral.

The transactions between Dockendorff and Schwab-Kepner Co. should be segregated so as to show the above.

I trust you will put your man to work on this

2614 matter at once, as I must have the matter in shape to examine Dockendorff on Friday, and the Wednesday and Friday following, on which dates the case is to proceed.

If I have not made myself clear in this letter as to the various lines of inquiry, kindly see me at once.

Yours very truly,
(Signed) Ralph Wolf.

Enc."

Question read: Now explain page 7 of the report please?

2615 A. Exhibit B2, page 7 of this report makes a reconciliation of the balance as of November 29th, 1910, as compared with Exhibit B and Exhibit P9.

Q. Now, the collateral account on page 8, explain that please?

A. Page 8 opens with a balance of the August 1st collateral list as adjusted and shown on page 9 of this report; the first column represents weekly periods which arrangement had been preserved in entering all figures throughout this schedule, this exhibit. The second column represents the XC schedules by weeks, shown in detail on the large collateral schedules; the third column represents

2616 the schedules other than XC as shown in detail on the large collateral schedules; the 4th column represents the total of columns 2 and 3; the 5th column represents the total remittances as shown by column 3 of schedules 6 of this report; the 6th column represents the discount deducted from customers' remittances as shown by schedule 6 of this report; the 7th column represents the 8th and 10th columns of schedules 6 shown by this report; the 8th column represents the sum of the charge backs by Dockendorff to the Schwab-Kepner Company shown in detail on the large collateral schedule;

the 9th column represents cash, apparently paid by Schwab-Kepner Company as shown by schedule 6 of this report; the 10th column discounts on these payments as shown by schedule 6 of this report; the 11th column credit overdues as shown by schedule 6 of this report; the 12th column represents the total of columns 5, 6, 7 and 8; the 13th column represents the difference between columns 12 and 4. 2617

Q. You were asked whether the first item in the last column on page 8 included the charge backs; did Mr. Dockendorff produce any exhibit for your examination showing what the charge backs were on the first of August, 1910, if any? 2618

Mr. Cohen: I object to that—the question should be did the witness have any exhibit from which he could have ascertained the fact.

Question withdrawn.

Q. Were any exhibits submitted to you which would indicate what portion, if any, of the $341,123.91 balance of security account on the first of August, 1910, was composed of so-called charge backs?

A. Nothing that was complete.

Q. From what exhibit did you obtain the figure of $341,123.91, in the first column in the balance of security account on page 8? 2619

A. It was the adjusted figure of the collateral schedule in evidence, P17.

Q. Without any adjustment what did that exhibit show?

A. $339,809.85.

Q. In other words, yours was about $2,000 more?

A. Yes, sir. Hardly that.

Q. The exhibit you referred to was an exhibit produced by Dockendorff?

A. Yes.

2620 Q. In the exhibit produced by Dockendorff showing the balance of security account a sum in excess of $239,000, did his exhibit indicate that any portion of that was composed of charge backs?

A. No, sir.

Recess Taken.

After Recess:

PHILLIP S. SUFFERN, examination continued.

2621 By Mr. Wolf:

Q. Mr. Suffern, what items appear upon pages 10 to 15 inclusive?

A. The items covered by invoices on August 1st list of collateral in which the sales books and shipping orders fail to show the dates of shipments and in which the books and shipping orders indicated that they were shipped in other than the usual manner.

Q. You have here an item—shipped by American Shirt Company?

A. Yes, sir.

Q. One column?

2622 A. Yes, sir.

Q. And another L. N. Levenson?

A. Yes, sir.

Q. Now, is there any column indicating goods shipped by the Schwab-Kepner Company and if so, which?

A. There is no other column positively indicating that they were shipped.

Q. What is the column marked charge slips, no shipping date?

A. On the shipping orders covering those invoices or on the original charge slips covering

those invoices there was no evidence of the date 2623
on which they were shipped.

Q. Were those goods shipped by the American Shirt Company or L. N. Levenson or Schwab-Kepner Company; or doesn't that appear?

A. It does not appear.

Q. What I want to have appear is whether or not these schedules purport to show shipments only by the American Shirt Company and L. N. Levenson or whether it purports to indicate what shipments were made by the Schwab-Kepner Company also?

A. It is not intended to show only those ship- 2624
ments made by the American Shirt Company and L. N. Levenson.

Q. Now, just illustate that with a concrete example. Take the first entry, Colonial Handkerchief Company, 8890, charge slips no shipping date 8497.26, that isn't entered under the item American Shirt Company or L. N. Levenson?

A. No, sir.

Q. What does that indicate?

A. That the date on which those were shipped from the mills, warehouses or other depository of the goods was omitted from—

Q. What does it indicate as to the identity of 2625
the shipper?

A. It doesn't place the identity.

Q. Were those goods purporting to have been shipped by the Schwab-Kepner Company?

Mr. Cohen: Are you asking what the schedules purport to show or what the exhibits show?

Mr. Wolf: I suppose they are identical.

A. The entries shown on the shipping orders covering those goods do not show where the goods

2626 were shipped, their date or by whom they were shipped.

Q. What shipping records are they, of what company?

A. Schwab-Kepner Company.

Q. Now, pages 16 to 22, what do they purport to show?

A. The list of accounts receivable on August 1st, that were paid by remittances shown on the remittance sheets under the caption overdues paid by Schwab-Kepner Company or S. K. Co.

Q. And the figures and details following are the supporting details to that item, are they not?

2627 A. Yes, sir.

Q. Page 26 purports to show what?

A. An item omitted from the August 1st collateral list, Exhibit P17 that was shipped subsequent to the date of August 1st.

Q. Pages 23 to 25 of your exhibit purport to show what?

A. The accounts receivable contained in the August 1st list of assigned collateral in which shipment was made after August 1st, showing whether the accounts were paid or remained open.

Q. And the dates of shipment you testified this morning you obtained from certain data?

2628 A. Yes, sir.

Q. Pages 27 to 60 of the schedules show what?

A. The dates of shipments of collateral assigned subsequent to August 1st, further showing the payments that were made when the shipments were after the date of assigning the account.

Q. Those sheets show the date of shipments of the accounts receivable assigned subsequent to August 1st, 1910?

A. Yes, sir, all that I could find.

Q. They show the amount paid under each account assigned?

A. Yes, sir.

Q. And those that are unpaid are left open? 2629

A. Yes, sir.

Q. And these pages 27 to 60 is a list of the shipments made after the date of collateral sheet assigning the accounts?

A. No, sir, it contains more than that.

Q. It contains that, does it not?

A. Yes, sir.

Q. You have answered that question no, which is right?

A. It contains all of those shipments after the date of the assigning of the accounts.

Q. So when you answered no to my original question it was incorrect? 2630

A. Yes, sir.

Q. Now, do these pages 27 to 60 show anything other than that, and if so what?

A. It also shows the date of shipments of all accounts receivable assigned subsequent to August 1st even although shipment may have been made before the date of the assigned account.

Q. And you have segregated in a separate part of this exhibit the shipments made after the collateral sheets assigned the accounts to Dockendorff?

A. Yes, sir.

Q. So the statement shows the accounts receivable assigned subsequent to August 1st whether the shipment was made before or after the collateral sheet containing the assignments of them in a separate part and you have segregated the shipments made after the date of collateral sheet assigning the accounts? 2631

A. Yes, sir.

Q. Now, just to give some idea on the record can you give us the total of the shipments made after the date of collateral sheets assigning the ac-

2632 counts that were paid and also the amount that was open as shown by the schedules?

A. Yes, sir.

Q. What is it? First give the amount that was paid?

A. $160,855.76.

Q. And the amount open?

A. $101,292.58.

Q. In other words, those two items represent, in one instance the payments made and in the other instance the face value of the accounts assigned which were shipped subsequent to the date of assignment?

2633 A. No, sir.

Q. What have I said in my question that was wrong?

A. Some of the open accounts may have been for the net amount, the original amount less a credit which appears—

Q. Which appears in the last column, is that where it appears?

A. It might not appear in this schedule.

Q. Where would that appear?

A. It would appear in Exhibit R502.

Q. Less the credit allowed against those particular accounts assigned those figures represent these

2634 respective sums?

A. Yes, sir.

Q. What purports to be shown on pages 61 and 62 of your account?

A. List of XC accounts assigned to Dockendorff subsequent to August 1st, 1910, showing whether the same had been paid or remained open on November 29th, 1910.

Q. What purports to be shown on page 63?

A. Two accounts contained in the list of assigned accounts receivable of August 1st that were paid twice subsequent to August 1st, 1910.

Q. What appears on pages 64 to 68 of your account? 2635

A. A list of the checks sent by Dockendorff to Schwab-Kepner Company from August 1st, 1910, to November 29th, 1910, as shown by the checks examined by me.

Q. Take the first item, the Empire Trust Company, what does that indicate?

A. A check as shown drawn on the Empire Trust Company by J. E. Dockendorff to the order of Schwab-Kepner Company and deposited by them.

Q. What is shown on pages 69 to 74 of your account?

A. A summary of the remittance sheets from August 1st to November 29th, 1910, totaled by weeks. 2636

Q. These columns headed settlements by Schwab-Kepner Co. of accounts charged back, refer to remittance sheets which you have already testified about?

A. Yes, sir.

Q. What appears on page 75 of your report?

A. Additional remittance sheets received subsequent to the preparation of Schedule 6.

Q. Schedule 6 is contained within pages 69 and 74 of the report?

A. Yes, sir. 2637

Q. What is shown on pages 76 and 77 of the report?

A. Assigned accounts receivable that apparently were missing from the list of August 1st as shown by remittance sheets examined subsequent to August 1st, 1910.

Q. In other words you mean that the accounts appearing on pages 76 and 77 do not appear on the August 1st collateral list produced by Dockendorff?

A. Yes, sir.

2638 Q. And under the column headed amount first item unpaid, what does that mean?

A. That the amount shown in that column paid and turned over to Dockendorff as shown by the remittance sheet, shown in the first column of the schedule.

Q. But the assignment of the account does not appear to have been made according to any of the exhibits examined by you?

Mr. Cohen: Objected to, he got that from the remittance sheets.

Q. Did you find any remittance sheet showing
2639 an assignment of these accounts appearing on pages 76 and 77 of your report?

A. No, sir.

Q. What is shown on page 78 of your report?

A. Collateral assigned to Dockendorff subsequent to July 31st.

Q. That is included in a separate collateral schedule of this report?

A. Yes, sir.

Q. Why is this segregated, why are these particular accounts put in a separate page of the report?

A. Because I did not consider them collateral in Dockendorff's possession.

2640 Q. Why not?

A. They originated subsequent to July 31st, 1910.

Q. In the list of collateral submitted by Dockendorff as being in his possession on July 31st, 1910, no these accounts appear?

A. Yes, sir.

Q. Now, you say that they are also included in a separate collateral schedule of this report, to what collateral schedule of your report do you refer?

A. Exhibit R502.

Q. You also have made a separate schedule which I think appears at pages 23 and 25 showing shipments of merchandise after August 1st, 1910, on

accounts as against which Dockendorff has purported to have already made a loan on the first of August, 1910, is that correct? 2641

A. Yes, sir.

Q. Do I understand that page 78 should be added to items appearing on pages 23, 24 and 25 of your report?

A. No, sir.

Q. What is the difference between those two classes of items appearing on pages 23 to 25 and those on page 78?

A. The items appearing pages 23 to 25 inclusive represent certain shipments which were made of accounts which were assigned to Dockendorff prior 2642 to August 1st, 1910.

Q. And the shipment was made after August 1st, 1910?

A. Yes, sir. The schedule on page 78 is only for the purpose of excluding from Exhibit P17 those accounts which were assigned to him subsequent to August 1st, 1910.

Referee: Do you mean on which the goods were shipped subsequent to that date?

A. No, sir. I mean that were assigned to him after August 1st.

Q. Mr. Suffern, will you please clear up Mr. 2643 Cohen's mind and my mind as to what this sheet 78 does show which isn't shown anywhere else?

A. It shows the list of accounts included in Dockendorff's list of assigned accounts receivable August 1st, 1910, which were assigned to him after that date.

Mr. Cohen: How do you know that they were assigned after the first of August?

A. By reference to the collateral schedules assigning them.

2644 Q. In other words, Mr. Dockendorff's exhibits, I think you said P17, shows his collateral as of the first of August, 1910, and it purports to show that Dockendorff was then the assignee of these accounts whereas according to the other papers in evidence they were assigned subsequent to August 1st, 1910, according to the collateral schedules?

Mr. Cohen: May I ask whether on page 78 there appears the dates of the assignments as they appear in the collateral schedules?

A. I should say subsequent to July 31st, 1910.

Q. Then with the exception that August 1st, 1910
2645 should be July 31st, 1910, in my preceding question that question is a correct statement of what these papers show?

A. Yes, sir.

Q. So that, if I understand your testimony correctly the items designated on page 78 of the report show accounts assigned to Dockendorff subsequent to July 31st, 1910, but which Dockendorff's Exhibit P17 purports to show were on hand on that date?

Mr. Cohen: Objected to on the ground that it calls for a construction of an exhibit in evidence which shows the condition of the
2646 account on the first of August. Whether it is the beginning of the day or the ending of the day the exhibit does not show. I can readily see how there might be between the collateral sheets and the exhibit some discrepancy arising out of the difference in the day. We intended to include in the statement of August 1st all the collateral which we received on August 1st and if the witness undertakes to make up a schedule on the theory that that was the condition on July 31st, that explains the discrepancy.

Objection sustained.

Q. Will you tell us what page 78 of this record shows; tell us again? 2647

A. It shows those accounts contained in the list of accounts receivable assigned August 1st which were assigned subsequent to July 31st, 1910.

Master: You mean the assignments which were dated subsequent to July 31st?

A. Yes, sir.

Q. Where do those assignments appear, on what exhibit, I mean in the papers produced by Dockendorff?

A. In the collateral schedules.

Q. Now, can you show us the collateral schedule for August 1, 1910? 2648

A. Yes, sir.

Q. You have produced, Mr. Suffern, the two collateral schedules numbered 102 and 103 which purport to show all of the accounts assigned on the first of August, 1910 and which is an exhibit in evidence?

A. Yes, sir.

Q. Having been produced by Mr. Dockendorff, is that correct?

A. Yes, sir.

Q. They include bills numbered 1109 to 1126, do they not, inclusive? 2649

A. Yes, sir.

Mr. Cohen: I will state, if your Honor pleases, as a result of a computation of our accountant, subject to correction by the other side that the accounts which Mr. Suffern mentions as appearing on page 78 and in the two collateral sheets that he has referred to of August 1st, 1910 amount to $4290.17 of the $5574.39 and that the remaining accounts amount to $1284.22.

2650 Q. Now, Mr. Suffern, pages 79 to 81 of your report show what?

A. Differences between the merchandise and cash credits as shown by Dockendorff's Exhibit P17, and as shown by an examination of the remittance sheets in evidence subsequent to August 1st, 1910.

Q. Now, take the first item, invoice 8678, Colonial Handkerchief Company, will you illustrate how that works out in your exhibit?

A. On Exhibit P17 the first page, the amount of credits shown opposite the entry of 6878 is $172.61 under the column headed cash.

Q. What does that mean?

2651 A. It means that it is shown that the payment to Dockendorff was $172.61. In the remittance sheet it shows the payment of $176.16 which, added to another remittance from the Colonial Handkerchief Company on the same day of $132.54 made $308.70, the extension of that, less a discount is $304.71.

Mr. Cohen: What are you reading from?

A. Remittance sheet No. 130.

Q. Referring to pages 79 to 81 of your report I see that all the figures appearing on those three pages are segregated into two classes, one showing

2652 remittance sheets in excess of P17 and one showing P17 in excess of remittance sheets; will you explain what those two classes of items mean?

A. In posting the credits, the collections of accounts receivable that were turned over by the Schwab-Kepner Company to Dockendorff it was found that discrepancies existed between the amounts shown in the schedules, that is in P17 and the amounts shown by the remittance sheets. In some cases the amount shown as paid exceeded the amount indicated by the remittance sheets to have been paid on that date and in others the re-

mittance sheets which also contained credits for merchandise exceeded the credits of cash and merchandise as shown by Exhibit P17. 2653

Q. What is Exhibit P17?

A. The assigned accounts receivable as of August 1st, prepared by Dockendorff.

Q. Just read off any item on there?

A. Colonial Handkerchief Company, date, December 29th, #6674, amount $593.53, date Aug. 20, credit to merchandise $593.53.

Q. Now, then, the remittance sheets in excess of P17 indicate as I understand your testimony where the Schwab-Kepner Company sent to Dockendorff a remittance for an account which had been assigned to him and as appears by P17 the remittance was in excess of the amount as shown on Exhibit P17? 2654

A. Yes, sir.

Q. And you have also prepared a schedule where P17 exceeds the amount of the remittance sheets?

A. Yes, sir.

Q. That is to say, Dockendorff received less than P17 would indicate he had a right to receive?

A. The payments often were not for the full amount of the invoice.

Q. Now, take the first item, that appears on page 79, Colonial Handkerchief Company, and under the column of P17 are the figures $172.61 and under the column of Cash remittances you have an amount of $176.61, does that indicate that P17 prepared by Dockendorff indicates that he was entitled to receive as against that account the sum of $172.61 and actually received $176.61? 2655

A. No, sir.

Q. What does that indicate?

A. It would indicate that P17 shows that he received $172.61 regardless of the amount of the

2656 invoice and that the remittance sheet shows that there was sent to him $176.61.

Q. That is what I said. Taking that particular transaction according to P17 he was entitled to receive $172.61 and according to the remittance sheet actually received $176.61?

A. No, sir.

Q. Will you tell me what you do mean; explain what those figures mean?

A. It means that he received against that particular invoice $172.61. The collateral schedule in this case shows two remittances, a remittance on two distinct invoices, they are shown separately
2657 in the gross and they are reported at the net amount. The discount in that particular one had been taken in preparing R502, therefore showing on this one the gross is extended into this schedule 79 of the report; other cases in which there is not a grouping the difference is between a single item on this sheet and the report.

Q. Can you take any single item, a single transaction that will make it simple?

A. The third item, taken at random this is from page 79, shows that on page 3 of Exhibit P17 invoice 679 of the account of Rosenberg, no credit was given for the payment of the account remit-
2658 tance sheet 217 shows on the first entry that $139.05 was sent on October 4th to Dockendorff on account of that invoice.

Mr. Cohen: Which invoice?

A. Invoice 679.

Q. In other words P17 does not show that cash received, whereas in fact it was actually remitted?

A. Yes, sir.

Q. Now, you have the remittance sheets in excess of P17 separated into two different classes, one of merchandise and the other cash remitted; will you explain them?

A. The remittance sheets were divided into two 2659
parts, one remittance sheet would contain accounts that were paid and remitted to Dockendorff and the next remittance sheet might be a remittance sheet of credits reducing accounts previously assigned to him.

Q. Will you please give us an illustration of a merchandise transaction?

A. On page 2 of Exhibit P17 there is no entry made showing any credit for merchandise against invoice 528; on remittance sheet 296 there is a memo of credit overdue for invoice 528 of $87.44.

Q. How do you know that that was merchan- 2660
dise?

A. There is no evidence that it was merchandise?

Mr. Cohen: And yet you have put it in your schedule that way?

Q. Why did you put it in the schedule under merchandise?

A. I could not say whether it was from discussion with the man in charge of the accounts, Williams, or from the examination of the other records that led me to believe that it indicated that credit due to merchandise returned had been made.

Q. Well, in any event, Exhibit P17 does not 2661
show a credit of $87.44?

A. No, sir.

Q. Whereas, the remittance sheet of the Schwab-Kepner Company shows a credit of that sum as against invoice 528?

A. From Schwab-Kepner to Dockendorff, it doesn't show a remittance to them.

Q. A credit?

A. Yes, sir.

By Mr Cohen:

Q. Will you turn to that sheet again, Mr. Suffern, what is the language there?

2662 A. I presume you refer to the language affecting only this one account?

Q. Yes?

A. Credits, overdues.

Q. What did you understand from that Exhibit P17 that it meant?

A. That a credit was made to Dockendorff against the collateral which had been assigned to him.

Q. In these conversations that you had with Mr. Williams weren't you informed that that was the method of writing off an account in the Schwab-Kepner Company books?

2663 Mr. Wolf: I am going to object to that, I assumed that you merely wanted to ask a question to get some light on these figures, not to go into a cross examination.

Question withdrawn.

By Mr. Wolf:

Q. Now, to come back to one of the cash items, will you illustrate that a little further than you have done so that it is a little clearer? You have taken one item, Mr. Suffern, where Exhibit P17 doesn't contain any credit, I refer to invoice 697, now will you take on where Exhibit P17 does

2664 show a credit but the remittance sheet is in excess, for instance, take invoice 137, Russ, Eveloth & Ingalls, P17 shows $235.99 and the remittance sheet shows $387.03, and explain that.

A. Remittance sheet 288 shows a payment covering two invoices 8595, the amount of invoice of which is $376.98 and 137 invoice of $399.75, making $776.73; against that is remittance of $764.01, making a deduction of $12.72. On Exhibit P17 opposite invoice 8595 the full amount is shown as paid, deducting $376.98 from the amount of the remittance leaves a balance of $387.03, the pay-

ment opposite invoice 137 on Exhibit P17 is $235.99. 2665

Q. Taking up Exhibit R502, Mr. Suffern, will you explain what that purports to show?

A. First, it gives in detail the date, invoice number, name, due date, and amount of all invoices assigned to J. E. Dockendorff August 1st, 1910 to November 29th, 1910 inclusive; in the 2nd column is shown the amount of any checks sent on that day by J. E. D. to S. K. Company; the next column shows protested checks charged to Schwab-Kepner Company by J. E. Dockendorff in his account current; the 7th column charges of interest, commission and accountant's salary made 2666
by J. E. Dockendorff against Schwab-Kepner Company; 8th column total of the charge back sheets made by Dockendorff to Schwab-Kepner Company; 9th column gives the date of checks sent to Schwab-Kepner as shown by the remittance sheets without any particular heading; the next column gives the amount of the checks; the next the date of the checks sent to him as shown by remittance sheets listed under notations such as "overdues paid by S. K. Co.," the next column gives the amount of those checks; the following two columns give the date and then the amount of the items shown on the charge back pink slips sent by Dock- 2667
endorff to Schwab-Kepner Company; the next two columns give the date and amount of merchandise and other credits made by the Schwab-Kepner Company prior to charge back slips; and the last columns give the credits made by Schwab-Kepner Company for merchandise accounts that had been charged back by Dockendorff to them.

Q. In the computation of the figures of the last column on page 8—

Mr. Cohen: I think the witness has answered that question, he explained this

2668 morning that it was the result of deductions and differences between certain other columns appearing on that page; the witness didn't undertake to do anything more than make computations, he could not tell whether the goods were shipped or not.

Q. You were asked, Mr. Suffern, respecting the accounts which had been cancelled during the last two weeks; do those cancelled accounts appear anywhere in your report?

A. Only such accounts as were cancelled during those last two weeks and as were credited to Dockendorff by remittance sheets during that pe-
2669 riod.

Q. And other accounts cancelled, not appearing in the exhibits or records examined by you do not appear in your report?

A. No, sir.

Q. Now, after the receipt by you of this letter which has been marked Exhibit R503, did you have conferences from time to time with Mr. Wolf respecting the work that you were doing?

A. Yes, sir.

Q. What did Mr. Wolf tell you?

Mr. Cohen: I ask that if there were va-
2670 rious conferences they be separated into times and places. The work began last January and we are now in the middle of March.

Q. When were the first instructions received by you subsequent to the letter in evidence, how soon after that letter?

A. To the best of my recollection it was on January 27th.

Q. What was told you?

Mr. Cohen: The question should be what was said?

Q. What did Mr. Wolf tell you and what did you say to him respecting the work that you were doing? 2671

A. I was asked if I understool what he wished from the letter that had been sent us; whether or not it was possible to get the desired information from the records submitted.

Q. What was stated to you by Mr. Wolf with respect to what you were to do with regard to a showing of the transactions between Dockendorff and Schwab-Kepner Company as appeared from the records submited to you?

Mr. Cohen: I object, the witness has been asked to give an entire conversation and has not finished giving it. I don't think it is fair to give only a portion of the conversation. 2672

Witness: I had finished it as a conversation.

Question withdrawn.

Q. What was said to you by Mr. Wolf with respect to a showing of the transactions between Mr. Dockendorff and Schwab-Kepner Company in your report?

Mr. Cohen: I object, the witness was asked a few moments ago whether subsequent to the letter he had conferences with Mr. Wolf and he said he did—now counsel asks for a particular conversation two days after this letter and the witness has stated a part of the conversation without completing it and then counsel asks a general question. 2673

The Master: It does not appear to me that his recollection has been exhausted, Mr. Wolf.

Q. Can you recall anything else that was said to

2674 you by Mr. Wolf at this conversation with respect to the work that you were to do?

A. Not in his words, exactly.

Q. In the substance?

A. The substance was that I was instructed to prepare from this table full of data a reconstruction of the accounts showing the balances in the collateral account, account current, etc., and to in general prepare in as lucid a form as possible summaries showing the results of an examination of these papers which Mr. Wolf said he didn't want to in detail go through himself.

Q. Were you from time to time given a copy of
2675 the testimony taken in this proceeding?

A. From time to time, yes, sir.

Mr. Wolf: I would like to ask Mr. Cohen to let me have a copy of his accountant's report.

Mr. Cohen: The stipulation was that before it was put in evidence you were to have a copy and an opportunity to examine it before we offered it. You will be given that opportunity. I have requested the accountant in the light of to-day's examination of Mr. Suffern to supplement his account and I will give you his report together with the
2676 supplement but I want to keep the report at present until I have finished the cross examination of Mr. Suffern.

Mr. Wolf: My understanding was that I was to give Mr. Cohen everything I had as I received it from time to time and he was to do the same. We were here in an endeavor to get at the truth and we were going to deal with the question of the accounting with all our cards on the table and with that in mind I delivered to Mr. Cohen all of the reports which were made and have been made to me up to date by Mr. Suffern.

The Master: I don't remember the lan- 2677
guage of the stipulation but I should suppose all you could require of Mr. Cohen would be that you should have an opportunity to examine his accountant's report before it was offered in evidence. He says that it is not yet in shape to give to you and I don't know why he should give it to you just at this moment.

Mr. Wolf: I don't contend that either the Master or myself have the power to demand the production of that document. It is in complete shape as I recall it, bound and with a cover on it and it seems to me that dealing 2678
along the lines on which I have handled the situation it ought infairness to be submitted at this time.

Mr. Cohen: I may state that the purpose of the stipulation was to avoid the necessity of putting the accountants through a direct examination and furnishing counsel with the opportunity to prepare for a cross examination of the accountant upon his report. It is true that Mr. Sterns has furnished me with an analysis of the report of Suffern & Son and suggestions and criticisms of that report concerning which I intend to call him 2679
as a witness. I had no idea of giving that analysis and criticism to the other side until I had completed my cross examination of Mr. Suffern and I decline to give it to him until I have had the opportunity. When I have cross examined Mr. Suffern they may have it to their heart's content but in addition to that the examination of Mr. Suffern concerning his own account has developed certain matters as to which I shall ask Mr. Sterns to testify and as to which I have

2680 asked for a supplemental report so that his report to me is not a complete document today.

Mr. Wolf: When I gave my report to Mr. Cohen I told him it wasn't complete and Mr. Suffern has not yet completed the work. I told him that the papers I then gave him were not complete, not a complete report of what I wished to offer in evidence.

Master: I don't think he is called upon to do more than give you his report when it is finished, to give you a reasonable opportunity to examine it before Mr. Stern was
2681 put on the stand.

Sworn to before me this
24th day of March, 1911.

Adjourned to Wednesday, March 29th, 1911, at 10.30 A. M.

2682

UNITED STATES DISTRICT COURT, 2683

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on petition of John E. Dockendorff, before Edwin G. Adams, Referee in Bankruptcy, as Special Master, at No. 165 Broadway, New York City, on Wednesday, March 29th, 1911, at 10.30 A. M. 2684

PRESENT:

JULIUS HENRY COHEN and GIRARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and GARRARD GLEN, Attorneys for Receivers.

PHILIP S. SUFFERN, recalled.

Examination by Mr. Wolf:

Q. Mr. Suffern, are there any answers in the record which you wish to change and if so will you please make your statement in connection with them? 2685

A. Yes, sir. The second question on page 1024 Mr. Cohen asked, "Then you haven't used those terms synonymously?" He was referring to sales orders and shipping orders and I answered, "No, sir;" that should have been "yes, sir."

Mr. Cohen: You mean now to say that you did use them synonymously?

A. Yes, sir. The last question on that page, I was asked by Mr. Wolf, "You were asked with

2686 respect to the instructions received by you regarding the preparation of your reports and you testified in one instance that you made it in accordance with the instructions of counsel and in another instance that you received no instructions from counsel; now, which is correct?" The answer to that question does not entirely conform to the question and I wish to go on record that I did not consider that I had made any conflicting statements as to the character of the instructions.

Mr. Cohen: I ask that that be stricken out on the ground that it does not furnish any explanation, it is for the Master to de-
2687 termine whether the testimony is conflicting. I don't think that should properly be regarded as a correction of testimony.

Master: The motion to strike out is denied.

Exception allowed.

A. On page 1047 the Master asked a question with reference to the report, "You mean the assignments which were dated subsequent to July 31st?" and I answered, "Yes, sir." I should have said the assignments "issued" subsequent to July 31st.

Master: Instead of dated?

2688

A. Instead of dated. On page 1053 the second question on the page, "Why did you put it in the schedule under merchandise?" I realize that my answer to that, after thinking it over is entirely wrong and I should like to state that it was put in the column headed merchandise to conform to the 6th column of Exhibit P17, in which credits were entered under column headed merchandise.

Cross examination by Mr. Cohen:

Q. Mr. Suffern, how long have you been a certified public accountant?

A. I have not received my certificate, Mr. Cohen. 2689

Q. You are not a certified accountant?

A. I am not, no.

Q. How long have you been doing accounting work?

A. Do you mean public accounting?

Q. Yes.

A. Three and a half years.

Q. May I ask how old you are?

A. Certainly. Thirty-three.

Q. Have you had any experience with accounts with bankers who loan money on accounts receivable other than this case?

A. No, sir. 2690

Q. This is the first case that you ever worked on where you dealt with the business of loaning money or borrowing money on accounts receivable?

A. No, sir.

Q. You have worked on other cases of that character?

A. Yes, sir.

Q. How many?

A. I think one.

Q. What case was that?

A. I would have to consult the records of the office to get the name of the case. 2691

Q. Did you make a complete and exhaustive accountant's examination in that case?

A. No, sir.

Q. Did you receive in that case a letter of written instructions?

Mr. Wolf: I object, immaterial, incompetent and irrelevant.

Objection sustained.

Q. Did you or did you not understand when you undertook the work of examining into this

2692 case for the Trustee that you were free to make suggestions or criticisms to counsel?

Mr. Wolf: I object, incompetent, immaterial and irrelevant. I think the real issue here is not Mr. Suffern's instructions or lack of instructions on which we have already wasted considerable time, probably in an adroit endeavor of counsel to befog the real issue which is what did Mr. Suffern do, what do the records show and what is the accuracy of his work.

Master: I think the question is competent if it relates to the making of these accounts.

2693 Regarding what, Mr. Cohen?

Mr. Cohen: Regarding the accounting transactions between Schwab-Kepner and Mr. Dockendorff.

A. I do not understand the first part of the question.

Q. You may hear it read and then tell me what your difficulty is with it.

Question read.

A. I understood that I was free to make criticisms and suggestions.

2694 Q. Did you make any criticism of the theory given to you by counsel in the original letter of instructions which you received?

A. No, sir, I did not.

Q. Then you accepted that theory as satisfactory without further consideration of it?

Mr. Wolf: Objected to.

Mr. Cohen: An expert accountant may be employed for the purpose of doing work as an expert accountant and giving testimony as an expert with regard to certain things and is presumed to give a fair and honest

opinion based upon his experience. The 2695
testimony of an expert may thus present certain theories of accounting which are his own theories and supported by the reasons for this theory. An expert accountant may also be engaged for the purpose of making computations based upon the theory of counsel, simply for the purpose of aiding the Court and his experience merely aids the Court in understanding. The figures are more or less accurate because of his experience as an expert; his work then becomes a brief for counsel in the case and he is merely introduced upon the stand for 2696
the purpose of having his figures verified and for the purpose of being cross examined. In this case, however, the report of the expert accountant purports to be an analysis of the collateral account between Dockendorff and the Schwab-Kepner Company and when it was originally introduced was introduced with all the significance to be attached to the work of an expert account ant of distinction and reputation. The bringing out of the facts, however, on cross examination has already developed that the accountant was in one aspect limited and 2697
circumscribed by the letter of instructions which he received from counsel, but in the other aspect that he did make certain investigations, did have conversations with Mr. Williams and other people and it seems to me entirely material to bring out to what extent he followed the instructions and to what extent he did not follow them for the purpose of showing that as an expert accountant he did not do it as an expert accountant in the sense of giving the benefit of

2698 his experience but for the purpose of showing if I can that he was merely acting as a mathematician and not as an expert accountant, to compute and tabulate certain information along the lines designated by counsel and this work represents nothing more than the theory of counsel with the data that he thinks favorable and I am entitled to show in what respects he was instructed by counsel to disregard certain information available to him and in what respects he failed to avail himself.

Master: I think you are entitled to all
2699 that on cross examination but I still don't see why his state of mind regarding the instructions is of any moment. It is not a question of whether he was satisfied with the theory which counsel had adopted but whether he acted upon that theory.

Mr. Cohen: But here is a man who is presented as an expert accountant of standing and reputation; am I not entitled on cross examination to show if I can that if he had applied one-tenth or one-hundredth part of the accounting knowledge he is possessed of he would never have gone to the
2700 expense of doing all this labor, but that he felt constrained to do it because he was instructed to. I am entitled to show that if it had not been for those instructions he would have called counsel's attention to certain lapses in his construction of the matter. We are dealing with an expert, suppose for instance he were an expert put on the stand as an expert on autopsy and had given as the summary of his autopsy a conclusion that the deceased died from certain causes and his whole report or sum-

mary put in evidence and it was found on a superficial examination that he had neglected to examine the heart and the kidneys of the deceased, would it not entitle me to show that as an expert on such things it was his duty to examine all of the organs in the body of the deceased and that it was his duty to go to the district attorney and say "You have asked me to leave out the heart and the kidneys, why do you do that, we can't determine this thing without examining them." 2701

Master: Certainly you would, but that is not what your question relates to at all. 2702

Objection sustained.

Q. You are an expert accountant, are you not, Mr. Suffern?

A. Yes, sir.

Q. As an expert accountant were you satisfied with the theory of accounting presented in the letter of instruction which you received from counsel for the Trustee?

Mr. Wolf: Same objection.

Objection sustained.

Q. Did you make, as an expert accountant, to counsel for the Trustee any criticism of the theory of accounting set forth in the letter of instruction? 2703

Mr. Wolf: Same objection.

Overruled.

A. No, sir.

Q. Did you endeavor to secure all of the available sources of information that would enable you to determine whether or not the theory of accounting presented in that letter was either sound or unsound?

2704 Mr. Wolf: Objected to as incompetent, immaterial and irrelevant. It seems to me that the issue that we want to determine here is whether or not Mr. Suffern's work was done, either along particular or general lines, was done correctly, whether the facts that he shows in his report are the facts, whether it was done honestly and shows a true or not untrue result. It does not seem to me that going into other things that might or might not have been brought to his attention before the report was offered in evidence is material. They have had an
2705 expert clawing over it for some considerable time and if there is anything about that report which is a compilation of only what is in evidence which is in error if they will bring it out we will admit it and if the thing is true we are sure they will admit it. That is the only issue that will throw any light in the deciding of this case.

Objection overruled.

A. No, sir.

Q. And when you wrote the last paragraph of your report "As we cannot determine positively
2706 that all records relating to the transactions set forth in this report have been submitted to us or that all data submitted is in all respects true, the accompanying exhibits and schedules must be accepted subject to such adjustment as is necessary should other information be brought to our attention or should it develop that the information already in our possession and accepted as correct prove to be in error;" when you wrote that, did you mean by that that you had limited and qualified your report to the extent that if there were information which you had not received that would modify the theory upon which your report was

based, you would not be willing to stand for the report as the report of an expert accountant upon the situation? 2707

Mr. Wolf: Objected to on the ground that it calls for the operation of the witness's mind on a hypothetical situation which hasn't as yet been proven.

Overruled.

A. No, sir.

Q. Then what did you mean by it?

Mr. Wolf: Objected to.

Overruled.

2708

A. That if other information or records showed that the basis of this report or its figures were incorrect that the report should be changed to the extent of such corrections as were made.

Q. Now, you testified last time, Mr. Suffern, to the question about your having been given the testimony in these proceedings, a copy of the testimony taken in these proceedings was given to you from time to time at page 1059; did you read that testimony?

A. Yes, sir.

Q. Did you regard or disregard any of the portions of testimony in making up your report as an accountant? 2709

Mr. Wolf: Objected to because the question is too indefinite and is entirely immaterial, incompetent and irrelevant.

Overruled.

A. I read it for the purpose of throwing light upon the work I was doing.

Q. Then why did you not, when you made your report, on the first page, February 21, include in the summary of the examination that you made a

2710 statement that you had read the testimony in this case?

A. Because I had not read all of the testimony in the case.

Q. Why did you not then include that you had read a portion of the testimony in the case?

A. Because I did not believe that the reading of the testimony would materially affect the figures shown in the various tabulated schedules.

Q. Did you not, when I examined you once before testify that you based a certain tabulation upon testimony which you had read, given by Mr. Dockendorff in these proceedings?

2711 A. It is my recollection that I did.

Q. Then did not that testimony affect the figures which you put into this report?

A. As to the location of the items, yes.

Q. What do you mean by the location of the items; did you not attempt to set up a collateral schedule which would show the amount of collateral held by Dockendorff at any particular time?

A. Yes, sir.

Q. And did you not exclude from that collateral schedule, collateral described by you as charge backs?

2712 Mr. Wolf: That assumes something which is not proven, the fact is that it is shown in a column by itself.

Question withdrawn.

Q. On page 8 of your report did you not in the column headed balance security account exclude the accounts that are known as charge back accounts?

A. In part.

Q. And did you not do that because of testimony which you had read in this proceeding?

Mr. Wolf: Objected to, incompetent, im-

material and irrelevant. It doesn't make any difference what the reason was. 2713

Master: It is competent to show what he relied on.

Objection overruled.

Question read.

A. It assisted me in forming that opinion.

Q. Then we are to understand that a portion of the testimony that you read assisted you?

Mr. Wolf: Same objection.

Overruled.

A. Yes, sir.

By the Master: 2714

Q. To what portion of the testimony do you refer?

A. The particular part in which I read—

Q. Whose testimony?

A. Mr. Dockendorff's testimony.

Q. With reference to the charge backs?

A. Yes, sir.

By Mr. Cohen:

Q. If you found that any portion of the testimony assisted you in making up your report, why did you not read it all to see whether some other portions might not either assist you or correct the impressions that you might have formed from the reading of the portion of the testimony that you did read? 2715

Mr. Wolf: Objected to.

Overruled.

A. At the time I began the examination of the accounts from the records in evidence there was a limited length of time given to counsel for the trustee for an extension and therefore I used every effort to facilitate the finishing of the work and

2716 during the progress of the work I failed to read the testimony and subsequent to the delivery of the report I did not call for it.

Q. Now, don't you think Mr. Suffern, frankly, as an expert accountant, that the use of the words in the last column of page 8 at the head of the column "balance security account" on a page headed Schwab-Kepner Company in bankruptcy in account with John E. Dockendorff, collateral account August 1st, to November 29th, 1910, is misleading, taken by itself?

A. It is not intended to be taken by itself.

Q. But assuming that the page is taken by itself
2717 as a basis for reasoning and deduction, do you not think, frankly, as an expert accountant that the use of those words "balance security account" as a heading to that last column are misleading?

Mr. Wolf: I object on the ground that the witness has testified that it isn't.

Objection sustained.

Q. At page 1053 of your testimony you testified that you had a talk with Mr. Williams, did you have more than one talk with him before preparing your report?

Mr. Wolf: Objected to, that testimony was
2718 corrected this morning, he testified that he took that from Exhibit P17.

Mr. Cohen: I am concerned with testimony given, with conversation with Mr. Williams. I am entitled to know how they affected his mind.

Mr. Wolf: I object to the question as containing an assumption not warranted by the evidence as it now stands.

Objection overruled.

A. I believe so.

Q. Did you make any effort through Mr. Will-

iams to get any information that would assist you 2719
in preparing your report?

A. Yes, sir.

Q. And did you secure such information from Mr. Williams?

A. Yes, sir.

Q. Then why, in the statement of the sources from which you made up your report did you not refer to that fact?

A. Because the basis of the information which I received was covered by the report in which we said that we had examined the sales books and shipping orders. That should be shipping records.

Q. Now, apart from your report, Mr. Suffern, as 2720
an expert accountant, what did you ordinarily understand by the words, balance security account?

Mr. Wolf: I object.

Overruled.

A. The outstanding balance of the account.

Q. The actual outstanding account?

A. The actual outstanding balance of the account.

Q. Balance of collateral?

A. Yes, sir.

Q. So that you mean by balance of security account the total amount of security held at a par- 2721
ticular date by the individual or corporation in question?

A. Are you speaking now of a general question or of this report?

Q. No, I mean the use of those general terms.

A. Yes, sir.

Q. And if, as an expert accountant, you were making an examination of a collateral account and were asked to testify to its accuracy you would endeavor, would you not, to ascertain the actual amount of the security on hand at that particular date?

2722 A. Yes, sir.

Q. And would you not resort or endeavor to resort to every source of information that you could get upon that subject before making your certificate?

A. Yes, sir.

Q. Now, having resorted to Mr. Dockendorff's testimony in this case and having found as you testified that although he did not take into account the charge backs for the purpose of making additional advances, nevertheless, he retained it as collateral, why did you omit in the weekly balances in the last column of page 8 to include under the
2723 heading balance security account the collateral which you understood he held in the way of charge backs?

Mr. Wolf: I object to the question containing the words "which you understood he held in the way of charge backs."

Question withdrawn.

Q. Mr. Suffern at pages 976 and 977 of your testimony you stated, "I consider that the charge backs, from Mr. Dockendorff's standpoint, released the security as far as any advance against the same was carried and that after the account became a
2724 charge back, it was additional security retained by Mr. Dockendorff against which no actual money was loaned but which he still claimed as an account should the same be paid," and further down, "And according to your previous testimony you treated those in the accounts as collateral which Mr. Dockendorff continued to hold, but upon which he made no further advances, is that correct?" and you answered, "Yes, sir." In the light of that testimony and your testimony today that balance security account usually means to an accountant the balance of the security which the creditor holds at a

particular date, why did you exclude from the last column of page 8 under the heading of those words the charge back accounts? 2725

A. Because the accounts were past due and unpaid and as I understood Mr. Dockendorff's testimony the advances against the same were released when he charged them back to the Schwab-Kepner Company. I did not consider them security of any definite value.

Q. Did you or did you not consider them as security in making up this report?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant. 2726

Overruled.

Question read.

A. I did not consider them as security that was extended into the balance of the security account.

Q. That doesn't answer my question. Please answer the question.

A. I show them in one place as a security which is eliminated from the balance column, therefore it is treated both ways

Master: You mean on page 8?

A. Yes, sir. It is not included here but it shows there as eliminated security. 2727

Q. Then your answer is that you treated it both as collateral and not as collateral?

A. In different places.

Q. Then why did you use the term balance security account which you have testified today as an expert accountant usually means the balance of the security which a man holds at a particular date and exclude from that column security which in other columns you treated as collateral?

Mr. Wolf: Objected to, immaterial.

Overruled.

2728 A. The way the question is framed it seems to call for two different answers.

Q. You may make any answer you please to that question, that you think is satisfactory.

Question read.

A. First, the balance of the security account is the balance as shown by the schedules prepared and in evidence which show very distinctly that the column including the charge backs by Dockendorff is eliminated from that balance. Second as to why I eliminated it, I opened the account with the security shown to have been on hand at the begin-
2729 ning of the period; I added to that all the security, this is collateral delivered to Dockendorff; I deducted from that the cash payments, the discounts taken, the credits and allowances of that nature and the charge backs, leaving, inferentially, the good accounts at each date shown on that schedule in that exhibit.

Q. Then the last column on page 8 is no more nor less than a computation, but does not purport to give a statement of the actual amount of collateral which Dockendorff held on these particular dates.

Mr. Wolf: Objected to, calls for a con-
2730 clusion of the witness as to what is collateral.

Overruled.

A. Yes, sir.

Q. Don't you think, Mr. Suffern, now, having passed through this examination that it was a little unfortunate and misleading that you should have put at the top of that column on that page headed collateral account, the words balance security account?

A. Not when what constituted the balance is shown so clearly as it is shown by the schedules.

Q. Did you not understand from the letter of 2731
instructions that you received from Mr. Wolf, which is in evidence, that it was sought to show the comparative condition of Dockendorff's security between the first day of August and the last date in your report?

Mr. Wolf: Objected to on the ground that the operation of the witness's mind is not of any materiality or relevancy.

Overruled.

A. Yes, sir.

Q. Did you prepare as a matter of fact any statement which showed a comparison of the condition 2732
on those dates?

A. Yes, sir.

Q. Where is that statement?

A. The statement is Exhibit C, page of this report.

Q. The one that we have been examining you about just now?

A. Yes, sir.

Q. And you think that page discloses to the reader the comparative condition of Mr. Dockendorff's collateral account on the various dates, do you?

A. Yes, sir. 2733

Q. And that page is the answer, so far as you as an expert can give it, to Mr. Wolf's question in the letter which was put in evidence "subsequent to August 1st, 1910, was Dockendorff's security placed in better shape" and to his question, "To what extent?"

A. No, sir.

Q. Where will we find the answers to those questions?

A. Those questions are not answered.

Q. Were you not asked in this letter, "The following should therefore be the matters investi-

2734 gated" was your attention not called to the fact that it was counsel's contention that having knowledge of the insolvency on the first of August, 1910, any transfer of security by which Dockendorff bettered his condition subsequent to that date would be a preferential transfer?

A. My attention was called to that.

Q. And did you understand what that meant?

A. I gave it a meaning that I understood.

Q. Did you understand that that was regarded by your client as a very important matter in this investigation?

2735 Mr. Wolf: Objected to, incompetent and irrelevant.

Overruled.

A. I don't know the degree of importance that he attached to it.

Q. How many days did you spend upon your job, Mr. Suffern?

A. I can't tell you without looking at our records.

Q. Well, approximately?

A. This is only approximately, and I should say fifteen to twenty-two.

Q. Was that your personal time?

2736 A. It is my personal time that I am testifying to but I am very uncertain as to how near correct it is.

Q. How many assistants did you have on this job?

A. I had four or five in all.

Q. And how many days did they work?

A. I do not know without looking up our records.

Q. What is your best recollection?

A. This is entirely an estimate and I may be far wrong, say seventy-five to ninety days, between that.

Q. And were you and they paid at the standard 2737
rates that are paid to expert accountants in this city?

Mr. Wolf: Objected to.
Objection sustained.

Q. I will ask you this question, Mr. Suffern, was your retainer other than the ordinary per diem retainer that accountants receive in New York?

A. No, sir, it wasn't.

Q. Was it a contingent retainer?

A. No, sir.

Q. Was it a lump sum?

A. No, sir. 2738

Q. Was it certain and definite regardless of the result of this proceeding?

A. I don't understand the question.

Master: Was your compensation contingent in any way upon the outcome of this litigation?

A. No, sir.

Q. Then you did all this work and did not answer the questions put to you by Mr. Wolf in his letter of January 25th, put in evidence, the two questions "1. Subsequent to August 1st, 1910 was Dockendorff's security placed in better 2739
shape?" and "2. To what extent?"

A. Yes, sir, I did not answer those questions.

Q. Either in an accountant's report or orally to Mr. Wolf?

A. Not as answering those particular questions as questions.

By the Master:

Q. How did it happen that you didn't answer those questions?

A. Because I left it for Mr. Wolf to make his own deductions as to how it was affected.

2740 Q. You mean from that last column?

A. Yes, but I don't in any way write out that I find it changed from that to that or that to that.

Mr. Wolf: You simply left it to be inferred from the figures?

A. Yes.

By Mr. Cohen:

Q. Did you orally report to Mr. Wolf that as a result of any investigation you found that Dockendorff's security was placed in better shape subsequent to August 1st, 1910?

2741 Mr. Wolf: Objected to, incompetent, immaterial and irrevalent and not a proper subject for the examination of this witness.

Objection sustained.

Q. Did you understand, Mr. Suffern, that the words "the following should therefore be the matter investigated" then the two questions following meant that you were to investigate into those matters?

A. I don't know what questions they are that you are referring to.

Q. I am referring to the paragraph in Mr.
2742 Wolf's letter in which he says after informing you that Dockendorff had absolute knowledge that the Schwab-Kepner Company was totally insolvent and continued to make advances and that the only motive that Mr. Wolf could imagine was that he knew his account was in a precarious condition and that "this, however, is only an inference and remains to be proven from his books" and then, skipping a sentence in this paragraph "Having knowledge of the insolvency on the first of August, 1910, any transfer of security by which Dockendorff bettered his position subsequent to that date would

be a preferential transfer. The following should 2743
therefore be the matters investigated: 1. Subsequent to August 1st, 1910, was Dockendorff's security placed in better shape? 2. To what extent?" Did you understand from that that you as an expert accountant were to make an investigation into those matters referred to in those paragraphs?

Mr. Wolf: Objected to as not being a fair statement of the letter.

Overruled.

Question read.

A. Yes, sir.

Q. Now, what do you understand as an expert by 2744
an investigation? Do you understand that it is an investigation limited to the data furnished you by your client or an investigation as free and complete and exhaustive as an expert accountant can make it or anything else?

Mr. Wolf: Objected to because as a matter of law this witness would not have a right to investigate any documents that were not in evidence.

Master: I think the question should be divided.

Q. Do you understand by an investigation made 2745
by an expert accountant that it is to be limited to the data furnished to him by his own clients?

A. It has nothing to do with the investigation.

Q. Well, do you understand that when an expert accountant is directed to make an investigation and there is available data outside of that furnished by his own client, before he makes his report that it is his duty to avail himself of all of those sources of information?

A. Not necessarily.

Q. And so when you made an investigation in

2746 this case therefore you did not feel called upon to investigate into all of the data that was available for the purpose of making a complete accountant's answer to the questions put to you, is that so?

A. I did not know of anything available that wasn't given me.

Q. Well, you had, for example, portions of the testimony which you did not read, did you regard that as available?

A. It wasn't.

Q. It was not?

A. Because I never had it.

2747 Q. Did you regard the books of the Schwab-Kepner Company which were in the possession of the Trustee as available?

A. I made no effort to determine their availability.

Q. Did you regard the contract between Mr. Dockendorff and the Schwab-Kepner Company, in evidence here, as available?

Mr. Wolf: Objected to on the ground that it hasn't anything to do with the accounting between the parties except for such legal deductions as the Referee might draw.

2748 Overruled.

A. Not having seen the contract I did not know that it was in evidence.

Q. Did you ask for it at all?

A. I did not know that it was in existence.

Q. Did you ask whether or not the contract was in existence?

A. No, sir.

Q. As an expert accountant had you not sufficient experience to know that what was to be treated as collateral in the hands of a banker and what is not to be treated as collateral might

be affected by the written agreement between the parties? 2749

A. Yes, sir.

Q. Then why did you not ask whether such a written agreement existed in this case if you were called upon as an expert to investigate into the matter?

A. If I had known that there was a contract in existence, which was in evidence, and a copy of the same procurable I would have assumed in this instance that the same had been examined by counsel before he determined what information was up for special investigation.

Q. And you would have relied upon his statement to you without yourself examining the contract? 2750

A. Do you mean in this case or in every case?

Q. In any case?

A. No, sir.

Q. Then why did you not ask for it in this case?

A. Because I knew Mr. Wolf's ability in interpreting papers of that kind and relied upon his statement as to what he wished without verifying it.

Q. In exactly the same way that you relied upon his statement of the facts in the letter of instructions which you got, did you? 2751

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant.

Overruled.

A. No, sir.

Q. Did you rely upon his statement of facts as contained in that letter?

A. I relied upon the statement of facts as the statement of his opinion.

Q. Now, what do you mean by that? A fact is one thing and an opinion is another. Do you

2752 mean that you relied upon the statement of facts as his legal opinion?

A. I relied—I believe he uses the words "the facts are these" as equivalent to the expression this should be considered so and so.

Q. And treated it as the legal opinion?

A. Yes, sir.

Q. And as a basis for your work?

A. As a basis for investigating what he wished.

Q. And if his legal theory, in spite of your confidence in his ability, or his statement of facts were not sound, then the work that you did is to that extent defective?

2753 A. No, sir.

Q. Well, it would have to be taken subject to the qualifications and corrections of the facts and the correction of the legal opinion, would it not?

A. No, sir.

Q. You mean that your work is in such shape that regardless of the statement of facts and the legal opinion we are able to take any legal theory of the case and get the deductions from that?

A. That was the intention in the preparation of the report.

Q. Now, will you please tell me then how we should proceed with your report if we assumed

2754 for the purpose of considering the case that the charge backs were held as collateral by Mr. Dockendorff, proceed to make use of the report?

A. I would include in the balance security account all amounts shown in column headed "D" representing amounts charged back to Schwab-Kepner Company by J. E. Dockendorff; from that I would deduct the amounts shown in the following three columns and the balance should represent the balance security account eliminating the charge books as a deduction from the balance.

Q. Do you show a balance based upon that as an alternative theory?

A. No, sir. Anybody can see it from the figures before him. 2755

Q. Don't you think it would have been fairer to present a report which would have given this alternative figure as a ready means of calculation by the court?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant and not a proper question.

Objection sustained.

Q. Now, suppose that we assume as a legal theory, Mr. Suffern, that the money for the charge backs was not paid by the Schwab-Kepner Company checks, but that the money was sent down like the collections of accounts receivable, what process would we have to go through in order to avail ourselves of the information in your report to reach a result? 2756

Mr. Wolf: I would like to have that question a little clearer.

Master: Is the question clear to you, Mr. Suffern?

A. Yes, sir. The result would be that columns nine and ten on page 8 would be deducted somewhere from column 8 and in column 8 we would then show the net balance of accounts charged back, eliminating the payments and discounts taken in what we have termed payments by Schwab-Kepner Company. 2757

Q. But you have no schedule prepared showing what the balance would be on that theory?

A. No, sir. It is very quickly arrived at from these figures.

Q. What do you understand by XC accounts?

A. I understand by XC accounts an account assigned to Dockendorff by Schwab-Kepner Com-

2758 pany which Dockendorff accepted as collateral but did not advance against.

Q. What is the difference so far as holding it as collateral between XC accounts and overdue accounts?

A. One is an account apparently represented by an account receivable that is good for the amount of the assignment and the other is an account which is past due and therefore questionable as to collection.

Q. Is that the only distinction you knew of between them?

A. Well, for what purpose?

2759 Q. For any purpose of your examination and report. Do you know of any other difference than the one you have just given between XC accounts and overdue accounts?

A. Yes, sir.

Q. What other difference is there?

A. That Dockendorff may have at one time loaned on an overdue account.

Q. Anything else?

A. That one was assigned to Dockendorff and the other was a charge by Dockendorff to the Schwab-Kepner Company.

Q. Now, taking up your last answer, did you go
2760 to the Schwab-Kepner Company books to see whether in those books it appeared that that account was charged back to them?

A. As dollars or collateral?

Q. Charged back as either dollars or collateral.

A. I made no examination of the Schwab-Kepner Company books other than those previously testified to.

Q. As an expert accountant will you please tell us how you could find the remittance on the charge backs from the Schwab-Kepner Company to be remittances on accounts belonging to them instead

of to Dockendorff when they were sending the proceeds down to Dockendorff from day to day? 2761

A. I will testify again as to that. I thought that Dockendorff charged the Schwab-Kepner Company with that amount of collateral representing the charge back slips but if any of those should subsequently be paid he still had his fingers on them and was to get the money.

Q. So that you understand that the remittances came down as shown by the remittance sheets on the charge back accounts because, to use your own expression, Dockendorff still had his fingers upon those accounts and held them?

A. Yes, sir. 2762

Q. And you made no further investigation into the Schwab-Kepner Company books to ascertain whether or not those books would show anything different from that?

A. No, sir.

Q. Did you understand from the question "Subsequent to August 1st, 1910, was Dockendorff's security placed in better shape," that that covered the period inclusive of November 28th, 1910, the period mentioned on page 8 of your report?

A. I am trying to find the question you refer to.

Q. It is on the second page of Mr. Wolf's famous letter of instructions to you. 2763

Question read.

A. Yes, sir.

Q. Now if you were to show how Dockendorff's security was placed at the period covered by the last two weeks of that schedule, how could you ascertain those facts without finding out what the amount of the cancelled accounts was at the bleacheries?

A. The actual condition of that account could not have been shown without the information of the cancelled accounts at the bleacheries; on the

2764 other hand this is showing the balance of the account to all intents and purposes from the exhibits in evidence which Dockendorff had knowledge of.

Q. I understand that you took some of those exhibits in evidence and used some of the information available but now I am trying to find out whether you were endeavoring to furnish Mr. Wolf with a complete answer to the question or a complete answer to the court, and you say page 8 is the answer, why did you not avail yourself of all the sources available?

A. I didn't know that I said page 8 was my

2765 answer.

Q. Assuming that it isn't your answer, why did you not indicate in some way on page 8 what deduction should be made for cancelled security and why didn't you ascertain what the amount was?

A. It was impossible to ascertain that at the time.

Q. Was your attention called in any of the testimony that you read to the fact that certain other accounts receivable known as the Ferguson-McKinney and Tatum accounts were not valid as security held by Dockendorff at a particular date?

A. At what date?

2766 Q. At any date.

A. I do not recall having read that.

Q. Was your attention called to it by anyone?

A. It is my recollection that it was.

Q. Why didn't you endeavor to ascertain what the amount of that security was and deduct it from the amount of security shown to be held by Dockendorff at a particular time?

A. It wasn't possible to do that because my conversation was subsequent to the delivery of the report.

Q. When did you deliver the report?

A. Either on the 23rd of February or a day or 2767
two either side of that.

Q. At all events it was before you were called to the witness stand in this proceeding?

A. The conversation or the delivery?

Q. The delivery of the report, first?

A. Yes, sir.

Q. And the conversation was before the report was put in evidence, was it not?

A. This was put in evidence only last week, wasn't it?

Q. About ten days ago.

A. Yes, sir.

Q. Then why did you not ask for opportunity to 2768
correct your schedules and opportunity to make inquiries as to the amount of this collateral which would have to be deducted?

A. Because I believed that the qualifications contained in the beginning of the report showed that an elimination of that kind had not been made.

Q. Now, Mr. Suffern, as an expert accountant let me ask you this, is it possible to determine whether or not a man's condition with reference to his collateral is either improved or unimproved except by knowing what collateral he actually held at the dates of comparison?

A. Yes, sir. 2769

Q. How is it possible?

A. If the margin between an amount loaned and collateral is large a knowledge of the approximate collateral would show changes although it might not show the actual difference between the collateral account and the security at the definite dates.

Q. Is your answer perfectly plain to you?

A. It might be improved.

Q. Do you think $120,000 difference in collateral the gross amount of which is $440,000 is of sufficient consequence in changing the condition of the

2770 man's security to make it necessary for an expert accountant to ascertain the exact amount in order to answer the question as to wheher or not the banker's security has been placed in better shape?

A. Yes, sir.

Q. Then why didn't you do it?

Mr. Wolf: Objected to on the ground that you are assuming that he knew of the $120,000.

Q. When you ascertained as you testified that there were, during the last two weeks a considerable number of orders at the bleacheries cancelled
2771 and that certain accounts held by Dockendorff were cancelled why didn't you, for the purpose of answering Mr. Wolf's question, endeavor to ascertain the actual amount of those cancellations?

A. I did.

Q. Did you ascertain the actual amount?

A. No, sir.

Q. Why not?

A. When?

Q. At any time.

A. A question of time.

Q. You did not do so because of the limited time?

A. No, sir.

2772 Q. What was the reason then?

A. Because the work isn't complete.

Q. You mean your own schedules are not complete today?

A. I do not.

Q. You mean that the schedules that are in evidence are complete?

A. They are complete from the sources stated in the report.

Q. Then what do you mean by your answer to the question as to why you didn't get this information as to the actual amount?

A. That was subsequent to the delivery of this report that I had any knowledge of the non-shipments of the last two weeks. 2773

Q. But it was before the report was put in evidence, was it not?

A. Yes, sir.

Q. And you were willing to let a report go into evidence over your signature after you had learned that there were items of serious amount affecting the collateral account which you were offering for comparison to the Court, is that so?

A. Indirectly, yes, sir.

Q. What do you mean by indirectly?

A. The report does not purport to contain anything of that character. As soon as my attention was called to that Mr. Wolf said that he wished an examination made showing as far as possible the amounts of non-delivered goods at the bleacheries and that work was started at once. 2774

Q. Then you have in fact not answered yet this question of Mr. Wolf's put to you as to the condition of Dockendorff's security, isn't that so?

A. The report as delivered was our original answer to Mr. Wolf's request for the information, subject to such errors as might be found. We did not attempt to categorically answer each question but presented the report for him to make his own deductions from it. 2775

Q. But so far as the Court and the Referee are concerned in the consideration of your report you are not prepared to say today on your oath, as an expert accountant that that report does answer the question as to whether or not Dockendorff's security after the first of August was placed in better shape, are you?

Mr. Wolf: Objected to as having been gone over at least several times.

Overruled.

2776 A. It was not intended to answer that question.

Q. Now, Mr. Suffern, on the last page of this letter to you from Mr. Wolf the statement appears "The method of doing business was that Dockendorff charged back accounts that were unpaid a certain number of days after the maturity and new accounts were substituted" were you affected in any way in making up your report by that statement in Mr. Wolf's letter?

A. Yes, sir.

Q. Did you make any investigation to determine whether or not that statement of fact was borne out by any documents and any evidence that was
2777 submitted to you?

Mr. Wolf: Object to the evidence, I haven't any objection to his testifying as to the documents.

Mr. Cohen: Any of the testimony you have read?

Master: You had better separate your question, Mr. Cohen.

Q. Did you make any investigation to determine whether or not that statement of fact was borne out by any documents that were submitted to you?

A. Yes, sir.

2778 Q. What documents did you find that showed that the new accounts were substituted in place of the charge back accounts?

A. I haven't stated that I found any.

Q. Well, did the documents or did they not sustain that statement of facts, as you examined them?

Mr. Wolf: That isn't what the letter says. The letter says that new security was sub stituted for the old.

A. I left the answer to that question to Mr.

Wolf, to be drawn himself from Exhibit B and 2779
such other parts of the report as were of value to him.

Mr. Cohen: I move to strike out the answer and ask that the witness be directed to answer the question.

Motion allowed.

Question read.

Mr. Wolf: I object to the question upon the ground that it calls for the conclusion of the witness, calls for the legal conclusion which the Court is to reach.

Overruled.

2780

A. Owing to the fact that I asked counsel what constituted an advance and he stated—I gave him all the information and did not attempt to make any deductions myself.

Mr. Cohen: I move that the answer be stricken out and the witness directed to answer the question.

Motion denied.

Q. In the third paragraph from the last after reciting among other things the paragraph I have read to you appears the statement "The transactions between Dockendorff and Schwab- 2781
Kepner Co. should be segregated so as to show the above" did you understand by that that you were to segregate the transactions so as to show the matters and things appearing in the preceding paragraphs of that letter?

A. I understood that I was to so segregate the transactions between Dockendorff and the Schwab-Kepner Company as shown by the various records, the existence of which had been made known to me.

Mr. Cohen: I move to strike out the

2782 answer and ask that the witness be directed to answer the question.

Motion allowed.

Master: Can't you answer that yes or no?

Mr Cohen: I ask upon the record that the witness be directed to answer the question without reading the letter. The question calls the witness's attention to a certain paragraph, namely "The transactions between Dockendorff and Schwab-Kepner Co. should be segregated so as to show the above" and the question asks him if he
2783 understood by that paragraph that it was his business to segregate the transactions so as to show the facts in the paragraphs referred to. He can surely answer yes or no.

Master: Can't you answer that by yes or no without reading the letter through?

A. Well, I thought there might be something qualifying it in the letter. I will answer that "No."

Q. Now, in this same letter, Mr. Suffern, there appears the paragraph "At this time Dockendorff had absolute knowledge that the Schwab-Kepner
2784 Co. was totally insolvent, and continued to make advances. The only motive which I can imagine is that he knew his account was in a precarious condition. This, however, is only an inference and remains to be proven from his books." Did you understand by that that you were to do anything in the examination of Mr. Dockendorff's books to either prove or disprove that assertion of fact?

A. Yes, sir.

Q. And did you make such an investigation

to determine whether or not that was the fact? 2785

A. None of his books were submitted to me.

Q. That doesn't answer my question. Did you make such an investigation?

A. Yes, sir.

Q. What investigation did you make?

A. I examined the remittance sheets and collateral sheets which I understood from Mr. Dockendorff were, with the exception of the debtor's index cards, the only books that he kept showing his condition as to the account between himself and Schwab-Kepner. The result of that summary appears in the exhibits in the first part of this report. 2786

Q. Did you determine from that investigation that the statement of fact in this paragraph which I read to you was, in your opinion as an expert accountant satisfactory?

Mr. Wolf: I object, he wasn't put on the stand for any such purpose, he hasn't stated any such opinion.

Mr. Cohen: The witness has stated that he understood from this paragraph that the inference which Mr. Wolf referred to as remaining to be proven from his books was one which he was to either prove or disprove and he now tells us that he did make such an effort and made it from the documents in evidence. I want to find out whether it was carried out or not. 2787

Objection sustained.

Recess Taken.

2788 After Recess.

PHILIP S. SUFFERN, examination resumed.

By Mr. Cohen:

Q. The last paragraph in Mr. Wolf's letter to you says "If I have not made myself clear in this letter as to the various lines of inquiry kindly see me at once." Did you have any conversation with Mr. Wolf subsequent to this letter with reference to the lines of inquiry mentioned in the letter?

A. Yes, sir.

Q. Did you receive any other letters from him
2789 with regard to these lines of inquiry?

A. No, sir.

Q. Were you retained by Mr. Wolf to do any other work than the accounting work arising out of the relations between Dockendorff and the Schwab-Kepner Company?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant.

Mr. Cohen: I will add to that—in the Schwab-Kepner Company matter.

Mr. Wolf: I press my objection.

Objection withdrawn.

2790 A. No, sir.

Q. Did you receive other letters from Mr. Wolf besides this one?

A. Yes, sir.

Q. Where are those letters?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant.

Question withdrawn.

Q. Did you receive other letters from Mr. Wolf with reference to the Schwab-Kepner Company matter?

Mr. Wolf: I object to that. If counsel will limit the question to those matters referred to in this report there is no objection. 2791

Master: I think the question should be limited to the transactions between Mr. Dockendorff and Schwab-Kepner Company.

Q. You said, Mr. Suffern, that you were not engaged by Mr. Wolf to do any other work in the Schwab-Kepner Company matter except the investigation in connection with the transactions between the Schwab-Kepner Company and Dockendorff, that is correct, is it not?

A. I thought your first question was a little broader than that. 2792

Q. Is this last statement correct?

A. Yes, sir.

Q. And you received in addition to this letter of instructions other letters from Mr. Wolf with reference to that investigation, did you not?

A. Do you mean by that general investigation?

Q. The general investigation about which you have been interrogated?

A. No, sir.

Q. You did in fact receive other letters from Mr. Wolf in relation to the Schwab-Kepner matter? 2793

A. Yes, sir.

Q. And the only work of investigation that you did for Mr. Wolf was the work concerning the accounting between Schwab-Kepner Company and Dockendorff; you have so testified, have you not?

Mr. Wolf: I object, he hasn't so testified. Overruled.

A. No, sir.

Q. What did you mean by testifying a few

2794 moments ago that you were only engaged to do the work of investigation in the Schwab-Kepner Company matter with reference to the accounts between Dockendorff and Schwab-Kepner Company?

A. I do not recall having so testified.

Q. Did you hear Mr. Wolf make objection to the Referee a few moments ago?

A. Yes, sir.

Q. And did you hear him make a statement in making the objection as to what your testimony was or what he understood your testimony to be?

2795 A. I heard his objection.

Q. And you heard his statement with reference to his objection?

A. I heard everything he said.

Q. Now, I will ask the stenographer to turn back to your testimony and read your previous answers on this subject.

Questions and answers read as follows:

"Q. Were you retained by Mr. Wolf to do any other work than the accounting work arising out of the relations between Dockendorff and the Schwab-Kepner Company in the Schwab-Kepner Co. matter?

2796 A. No, sir.

Q. You said, Mr. Suffern, that you were not engaged by Mr. Wolf to do any other work in the Schwab-Kepner Company matter except the investigation in connection with the transactions between the Schwab-Kepner Company and Dockendorff, that is correct, is it not?

A. I thought your first question was a little broader than that.

Q. Is this last statement correct?

A. Yes, sir."

Q. (continued): You have heard the stenog- 2797
rapher read the testimony that you gave a few moments ago with regard to the investigation that you were to make?

Mr. Wolf: I object, incompetent and immaterial and irrelevant. This is an entirely new line of examination and by it Mr. Cohen makes this witness his own witness and the question is improper. It is utterly disconnected with the report. It is an entirely new issue.

Objection overruled.

Mr. Wolf: I further object upon the 2798
ground that it is improper cross examination.

Overruled.

Question read.

A. Yes, sir.

Q. Do you desire to correct or modify the answers which were read to you by the stenographer?

A. No, sir.

Master: How do you reconcile these statements with the ones you have just made?

A. The first one contained the words "arising out of the relations between," the second one contained the words "in connection with." I stated 2799
that I received no letters from Mr. Wolf except either arising out of the relations or in connection with. The last answer is to the question the accounts between the two. He asked me if I received any letters from Mr. Wolf other than in the accounts between the two.

Q. Then if I were to substitute the word transactions in the place of accounts in the question to which you answered no, your answer would be yes?

Mr. Wolf: Objected to.

Objection sustained.

2800 Q. How many letters did you receive from Mr. Wolf besides the one that was put in evidence in relation to the transactions that were investigated by you?

A. You mean in this connection, I suppose?

Q. I mean just what my question says.

A. I have received innumerable letters on various cases from Mr. Wolf.

Q. You have not paid attention to the question, sir. I will ask that the question be read again.

Question read.

Mr. Wolf: If you will ask him how many letters he received from Mr. Wolf in regard
2801 to the Selwale-Kepner Company I will raise no objection.

Master: How many letters did you receive from Mr. Wolf in relation to these transactions which you were investigating other than the one that was put in evidence?

A. Two.

Q. Have you those letters?

A. I have them.

Q. Have you them here?

A. I will see. Yes, sir.

Q. I ask you to produce them.

2802 Mr. Wolf: Do you ask that he hand them to you?

Mr. Cohen: Yes.

Mr. Wolf: We object to that unless Mr. Cohen will regard the matter which is a matter as your Honor will see entirely disconnected with the report in evidence, unless Mr. Cohen is willing to regard the witness as his own witness.

Mr. Cohen: I think the question turns on the nature of the evidence and I am willing to submit to your Honor's ruling.

Mr. Wolf: I state now that I am prepared to show by this witness that this has nothing to do with the reports which this witness has made which are in evidence. I object to the letters being handed to Mr. Cohen on that ground. 2803

Master: It does not appear that the letters relate to the investigation of these transactions for the purpose of preparing this report or that they contain instructions.

Mr. Cohen: If your Honor pleases it already appears in evidence that this witness made no other investigation, was retained to make no other investigation than an investigation into the transactions between Deckendorff and Schwab-Kepner Company. He received a letter and I asked if he received any other letters and he says that he has received two. The inference is that he did receive other instructions as to his work. I don't think that I ought to be limited as to the preparation of the report if the witness, for example, received instructions to disregard certain things. 2804

Master: You ought to show that these letters contain instructions.

Q. Now, Mr. Suffern, taking these letters which you have in your hand, did you find in either of these letters any reference to the name of John E. Deckendorff? 2805

Mr. Wolf: I think they are entirely and absolutely disconnected from these reports and the name of Deckendorff is mentioned but once in the most incidental manner.

A. Yes, sir.

Q. At the time that you received these letters were you making an investigation into the accounts

2706 and transactions between Dockendorff and the Schwab-Kepner Company?

Mr. Wolf: Objected to unless the date when these letters were received is fixed and unless the question is limited to the examination of the witness into the affairs of Dockendorff and Schwab-Kepner Company in connection with these reports.

Master: It must relate to the reports, Mr. Cohen, that is all he is testifying to, his examination into certain documents and exhibits and the preparation of these figures. It doesn't seem to me that any correspond-

2707 ence that may have been had after that is material.

Mr. Cohen: If your Honor pleases the witness has testified on cross examination already that these reports are not completed reports because they were made up before the witness had exhausted all the sources of information that he had. It was put in evidence after the witness's attention was called to certain matters that might change the calculations which he had made. If I can show, if your Honor pleases, that between the time that this report was made up and

2708 the time it was put in evidence the witness received instructions that have a bearing on these reports or a bearing upon the supplementary work that the witness is to do to complete the reports I am entitled to show it.

Mr. Wolf: I haven't any objection to Mr. Suffern being asked whether he received any written instructions respecting the reports in evidence.

Master: What have you to say with reference to Mr. Cohen's contention that he is entitled to show whether any further instruc-

tions were given to the witness between the time the report was finished and the time it was offered in evidence? 2809

Mr. Wolf: I haven't any objection to his asking the question, "did you receive any written instructions from Mr. Wolf regarding the written reports already in evidence."

Objection overruled.

Mr. Wolf: Objected to because the date of the letters have not been fixed.

Overruled.

A. No, sir.

Q. Had you completed your investigations?

A. No, sir. 2810

Q. Have you completed them today?

A. No, sir.

Q. Have you been making additional investigations since you finished the preparation of the reports that are in evidence?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant and calling for a confidential communication.

Overruled.

Mr. Wolf: I object unless Mr. Cohen is ready to make Mr. Suffern his own witness regarding this new issue. 2811

Overruled.

Question read.

A. Yes, sir.

Q. Did you receive instructions from Mr. Wolf with regard to this investigation?

A. Yes, sir.

Q. Are those instructions in writing?

Mr. Wolf: Objected to as being incompetent, immaterial and irrelevant and a new matter in which Mr. Cohen makes the witness his own witness.

Overruled.

2812 A. In part.

Q. And are the letters which you have in front of you part of the instructions which you received?

Mr. Wolf: I make the objection that this testimony is incompetent, immaterial and irrelevant and calls for confidential communications and in any event Mr. Cohen makes the witness his own witness.

Overruled.

A. Yes, sir.

Offered in evidence.

Mr. Wolf: Objected to, incompetent, im-
2813 material and irrelevant and that with respect to the matters therein contained they are confidential communications and in any event Mr. Cohen makes the witness his own witness.

Objection overruled.

Received in evidence and marked respectively Exhibits P601 and P602, March 29th, 1911.

Exhibit P601 reads as follows:

Exhibit P601.

2814 "HAYS, HERSHFIELD & WOLF,
No. 115 Broadway.
COUNSELLORS-AT-LAW.

RW-AF New York, March 16th, 1911.

In re Schwab-Kepner Co.

Messrs. Suffern & Son,
Attention of Mr. Philip Suffern.

Dear Sirs,

I wish you would kindly compile for me the

following statistical information of above Company: 2815

1. Debts of the corporation to unsecured creditors on the first of June, July, August, September, October, November and December, 1910.

2. Losses on sales. The testimony of both Williams and Kepner has been that the company, since the first of June, lost money on sales. Is it possible to procure a statement of this loss, month by month, from June to December? If this is difficult, please procure it say for the last two or three or four months.

2816

3. Statement of amount of goods sold in gray in the four months preceding insolvency.

4. Report as to what the books show regarding change of goods at the bleacheries, if they show anything.

5. The testimony of both Mr. Williams and Mr. Kepner was that during the six months preceding the receivership, the Company was losing money heavily, and if you can form any judgment about this from the books, please let me have it. That is, segregating this month by month.

2817

6. Kepner testified that up to a certain point of time, he got money from the banks, that he has got loans or increased loans,—if he got a loan of say $25,000 it was increased to $30,000. There came a time when his sole source of income was Dockendorff because the banks had reached the limit of the amount of money they would loan to him. Fix by the books the last time he got money from any of the banks.

Yours very truly,

(Signed) Ralph Wolf.

2818 (In ink). *This to mean the increasing or decreasing volume of goods at the various bleacheries."

Exhibit P602 reads as follows:

Exhibit P602.

"HAYS, HERSHFIELD & WOLF,
No. 115 Broadway.
COUNSELLORS-AT-LAW.

RW-AF New York, March 17, 1911.

In re Schwab-Kepner Co.

2819

Messrs. Suffern & Son,
Attention of Mr. Philip Suffern.

Dear Sirs,

In preparing yesterday the additional list for the statistical information desired, I think I overlooked one important point.

I asked you to obtain a list of the unsecured indebtedness month by month from June first to and including December first, 1910. This may not show everything that I wish, as old debts might have been paid off and new debts created.

2820 What I really desire to show in addition to the indebtedness month by month is the purchases of goods made month by month by the Schwab-Kepner Co. This is the more important item of the two.

Yours very truly,
(Signed) Ralph Wolf."

Mr. Wolf: I now ask that in view of the fact that these letters have been offered and received in evidence and it now appears that they relate to an entirely

new matter not in any way connected with the reports in evidence that with respect to any examination concerning them Mr. Cohen may be held to have made the witness his witness. 2821

Master: Are you going to examine any further?

Mr. Cohen: I don't know.

Mr. Wolf: I ask that it be held that Mr. Cohen in offering these letters in evidence and in his previous interrogations put to the witness respecting the matters contained in the letters, I ask that it be held that he has made the witness his witness. 2822

Objection overruled.

Q. Now, the first of these letters, Mr. Suffern, you received on the 16th of March according to the stamp and the second you received on the 17th of March, did you after that time make any examination of the books of the Schwab-Kepner Company?

Mr. Wolf: Objected to as improper cross examination and I ask that it be held that Mr. Cohen in asking the witness these questions makes the witness his own witness.

Overruled.

Question read. 2823

A. The examination called for by these letters?

Q. Did you make any examination?

A. Yes, sir.

Q. Then you did have the books of the Schwab-Kepner Company available for the purpose of such examination?

Mr. Wolf: What examination do you mean?

Mr. Cohen: Any examination that he made.

2824 A. Yes, sir.

Q. And was that before you were called to testify here?

A. No, sir.

Q. Did you have the books of the Schwab-Kepner Company at your office before you were called to testify here?

A. No, sir. What books?

Q. Of the Schwab-Kepner Company.

A. Are you speaking of all the books?

Q. Did you have any of them?

A. I have so testified.

Q. What books did you have?

2825 A. The sales books.

Q. Any others?

A. No, sir.

Q. Did you ask for any others?

A. My recollection is that I did not.

Q. Were you refused access to any of the others?

A. No, sir.

Q. So you did not attempt to get at any other books than those that were referred to in your report until after you received these letters of the 16th and 17th of March, is that correct?

A. Yes, sir.

2826 Mr. Wolf: It now appears that these letters were received by the witness after he went on the witness stand and it seems to me that that is another reason why no cross examination should be permitted of this witness concerning these letters and I wish to object to it from now on.

Mr. Wolf: I move to strike these two letters and all the testimony given in connection with them from the record on the ground that it now appears that they were received since the witness was called to the stand.

Motion denied.

Q. Mr. Suffern, assuming that Mr. Dockendorff was entitled to regard all of the collateral that he received as collateral which he held for his advances whether or not they were XC accounts or overdue accounts, how would we proceed in using your schedules and report to ascertain the condition of the account from week to week from those reports? 2827

A. You are referring to the collateral account, Mr. Cohen?

Q. Any portion of your report. How would we avail ourselves of your report?

Mr. Wolf: As I understood it, Mr. Referee that is what we went over this morning before we adjourned for the noon recess. 2828

Question withdrawn.

Q. Turning, Mr. Suffern, to schedule #3, you were asked concerning the column date shipped and you were asked with reference to the column under shipment made after date of collateral sheet assigning accounts, what was the purpose of preparing that schedule?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant.

Q. What did you intend to show by that schedule when you prepared it, Mr. Suffern?

Mr. Wolf: Object to the question what he "intended" to show. 2829

Overruled.

A. I intended to show the shipments that were made after the dates assigning the accounts, segregating the items showing whether they were paid prior to November 29th or remained open on that date.

Q. Why did you so segregate those items?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant.

Objection overruled.

2830 A. This was done because my interpretation of the instructions of counsel was—I believed he wished to know such shipments of merchandise as were made after the date assigning the accounts to Dockendorff.

Q. Did you, as an export accountant, have any theory of accounting with regard to the collateral held by Dockendorff from day to day when you prepared these schedules (referring to Exhibit A, Schedule 3)?

Mr. Wolf: Objected to, he has testified that he followed the instructions of counsel. What his individual theory was is utterly
2831 incompetent.

Objection overruled.

Question read.

A. No, sir, I had no theory of my own in the preparation of this in this manner.

Q. You were simply preparing statistical information in accordance with the instructions which you had received, is that correct?

A. In this schedule?

Q. Yes.

A. Yes, sir.

Q. Where did you get the instructions from?
2832 From whom did you get the instructions?

A. From Mr. Wolf.

Q. Did you get them orally or in writing?

A. I received these instructions orally.

Q. They are not contained in the letter of January 25th, 1911 which is in evidence?

Mr. Wolf: Objected to, the letter speaks for itself.

Objection sustained.

Q. When did you get these oral instructions?

A. Subsequent to the date of this letter, January 25th, 1911.

Q. Now, what were those oral instructions? 2833

A. I may fail to remember some of the instructions which subsequent questioning might recall, but among them I was requested to show such shipments of merchandise as were made after the date of the assignment of the account and such shipments of merchandise contained in the list of August 1st, 1910, which was shipped subsequent to August 1st, 1910.

Q. Are these all the instructions that you received at that time?

A. I do not recall any other instructions.

Q. Have you any memorandum of the oral instructions which you received and which you made 2834
at that time?

A. No, sir.

Q. Now, were you to make up this statistical information from documents that were in evidence or from documents that were not in evidence or from both?

A. From both.

Q. And who told you where you could get the documents not in evidence?

A. Mr. Wolf.

Q. What documents did he tell you to take?

A. Such records of the Schwab-Kepner Company as showed their record of the date of shipment of 2835
the accounts assigned to Dockendorff.

Q. Did you endeavor to make any investigation as to when goods were set aside at the bleacheries to fill the orders of customers?

A. I could not find—

Q. Did you make any such investigation?

Mr. Wolf: I object on the ground that there is no basis in the testimony for saying that goods were set aside at the bleacheries. It assumes that they were set aside.

2836 Q. Did you make any investigation to ascertain whether they were set aside?

A. Only as they were shown by the sales books, shipping orders and charge slips.

Q. Did the sales books or shipping orders or charge slips show any entries purporting to indicate when the goods were set aside in the bleacheries without being shipped to the customers?

A. No, sir.

Q. Did you read Mr. Kepner's testimony in this proceeding?

A. No, sir.

Q. Was your attention called to any of Mr. Kep-

2837 ner's testimony?

A. I do not know.

Q. At page 669 "As a rule those releases were not sent to the customer they were sent to the bleachery from whom we released the goods."

"Q. For delivery to the customer?

A. The release would be worded, for instance, 'Cold Spring Bleachery, Please hold order of so and so, bill number so and so' and that would represent goods assigned or set aside for a particular customer." Was your attention ever called to that testimony?

2838 A. No, sir.

Q. And have you any recollection of reading it?

A. No, sir.

Q. Would you, as an expert accountant, say that this Exhibit A, Schedule 3 had any value in determining the amount of collateral which Dockendorff held at any particular time?

A. No, sir.

Q. You mean by that answer "I would not say that it had any value?"

A. Yes, sir. I accept that as my answer.

Q. If it should appear, Mr. Suffern, in this examination that the remittances from the Schwab-

Kepner Company for accounts receivable that were overdue were remittances from collections from customers, sent to Dockendorff in the same way as remittances from other accounts, what changes or corrections would have to be made in your exhibit to conform to those facts? 2839

Mr. Wolf: I object to that question. I assume that when counsel refers to the overdues he refers to the overdue remittances appearing on these pink slips and if that is correct I object to Mr. Suffern answering that question for the reason that it calls for a legal conclusion as to the effect of this document, the pink slip. 2840

Objection sustained.

Q. Now, Mr. Suffern, did you examine the account current of Dockendorff that was put in evidence?

A. I examined part of it, yes, sir.

Q. Did you compare it with the other exhibits put in evidence by Mr. Dockendorff?

A. Yes, sir.

Q. Did you find that these overdue accounts appeared in the account current as actual charges against the Schwab-Kepner Company?

A. No, sir. 2841

Q. They did not so appear, did they?

A. No, sir.

Q. Now, assuming that Mr. Dockendorff was entitled to the overdue accounts as collateral, and assuming that the checks for those overdue accounts were customers' checks, were sent to Dockendorff by the Schwab-Kepner Company just the same as other customer checks for other accounts, what changes either in statistics or nomenclature would have to be made in your exhibit to make the exhibit of value on that theory?

2842 A. On page 5 of the report all of the items down to and including the total of $74,631.41 would be eliminated with the possible exception of the item of $15,724.66; on page 6 the remittances shown in column headed "F" would be included with or grouped with those in "E" not changing the total balance of the account current; on page 8 Exhibit C the cash and the discounts shown in the 9th and 10th columns respectively would be included with the remittances and discounts from customers as shown in the 5th and 6th columns respectively.

Q. And also the credit overdues?

A. No, sir.

2843 Q. Wouldn't the credit overdues be included in the schedules under merchandise credits and allowances?

A. That would have to come under a separate question, Mr. Cohen. A reduction of column "D" would be made by the sum of columns 9 and 10 that is, it would be shown separately, and the net figure would be extended into what is now "D."

Q. Don't you mean just the reverse of that?

A. No. Schedule 1 would be entirely eliminated and the memorandum now shown as in the column headed memorandum of goods not shipped in the usual way, would be prepared on a separate schedule.

2844 I see no change that would be made in Schedule 3. Any X-C account that are shown as paid at present by Schwab-Kepner Company checks would be included in this Schedule 3A of Exhibit A. No change in Exhibit B, Schedule 5. On Exhibit C, Schedule 6 the words "Settlements by S. K. Co." would be changed to "Settlements by customers" and the same on Schedule 6A, and on the large schedules Exhibit B502 the heading Schwab-Kepner checks would be changed to accounts paid subsequent to charge back.

Q. Now, didn't you read, Mr. Suffern, in the

examination of Mr. Deckendorff which you read, that he testified that no checks of the Schwab-Kepner Company were received for overdue accounts after the first of June? 2845

A. Yes, sir, and I found other things that were wrong, too.

Q. You paid no attention to that testimony at all?

A. I found—

Q. Just confine yourself to the question.

Mr. Cohen: I move to strike out the last portion of the previous answer "and I found other things that were wrong too."

Motion allowed. 2846

The Master: The answer as it stands upon the record is "Yes, sir."

Q. Did you, in connection with the work that you did before you made up these reports examine the check books of the Schwab-Kepner Company?

A. No, sir.

Sworn to before me this 29th day of March, 1911.

Adjourned to Friday, March 31st, 1911 at 10:30 A. M. 2847

2848 UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before
2849 Edwin G. Adams, as Special Master, at No. 165 Broadway, New York City, on Friday, March 31st, 1911, at 10:30 A. M.

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.

RALPH WOLF and GARRARD GLEN, Attorneys for Receivers and Trustee.

PHILIP S. SUFFERN, recalled.

Examination by Mr. Cohen:

2850 Witness: I would like to make a change in the testimony of March 29th. It was stated that no change would be made on Schedule 3 of this report, pages 27 to 60 inclusive if we considered the accounts called by this report paid by Schwab-Kepner checks as paid by customers' checks and belonging rightfully to Mr. Dockendorff. To make this report uniform, if those payments were considered payments by customers' checks and belonging to Mr. Dockendorff, it would be necessary to either include all payments made by those checks

for invoices assigned subsequent to August 1st, in Schedule 3 or prepare a supplement to Schedule 3 containing all payments of such assigned accounts subsequent to that date. 2851

Q. Are we to understand then from your correction that pages 27 to 60 do not contain any of the collections that you regard as accounts from customers paid by the Schwab-Kepner Company checks?

A. Yes, sir.

Q. And if it were subsequently found that these remittances were to be treated the same as all other remittances, that is the remittances which you treated as remittances from Schwab-Kepner Company checks were to be treated as customers' remittances, they would have to be added to this Schedule 3, pages 27 to 60, is that correct? 2852

A. It is, sir. That is, covering the period of assigned accounts subsequent to August 1st.

Q. Now, give us the approximate amount of those remittances which are not included in pages 27 to 60?

A. I should say the approximate amount of the same was about $16,700.

Q. Now, Mr. Suffern, you testified towards the close of the last hearing that among the changes that you would have to make if it appeared that the remittances on overdue accounts were the same as remittances from other customers' accounts it would be necessary to take out on page 5 of your report the items preceding and including $74,641.41, is that correct? 2853

A. Not as I recall it.

Q. With the possible exception of the $15,724.66?

A. Not just as I recall it.

Q. What was it as you recall it?

A. If they were paid by customers the same as

2854 the other remittances and he was entitled to them, then everything would be excluded down to and including $74,631.41 with the possible exception of $15,724.66.

Q. Your criticism of my statement to-day is the omission of the words "and he was entitled to them?"

A. Yes, sir.

Q. But you assumed that he was not entitled to them in making up your schedules?

Mr. Wolf: Objected to the assumption of the accountant; doesn't make any difference whatever.

2855 Overruled.

Question read.

Which schedules, Mr. Cohen? Any of them. In preparing schedules on page 5, for example did you or did you not assume that Mr. Dockendorff was entitled to these remittances?

A. I purposely refrained from making any such assumption and I think an examination of the heading of that statement will show that no opinion of mine goes with the figures.

Q. Why did you purposely refrain, as an expert accountant, from making the assumption and from

2856 making any investigation upon that subject?

Mr. Wolf: Objected to as utterly immaterial, incompetent and irrelevant.

Overruled.

A. Because in the preparation of Exhibit A shown on page 5, I desired to show the information contained according to the headings preceding each item in such a way that our client could use such of the figures as he desired, excluding everything that was not relevant to his case, but everything would appear.

Q. Is that the only reason that you can give 2857
for not determining as an accountant what theory, from the records, was justified or not justified?

Mr. Wolf: Objected to, immaterial, incompetent and irrelevant. He has given his reason.

Objection sustained.

Q. You have testified, Mr. Suffern, that a number of these schedules were prepared upon the theory that remittances on overdue accounts were paid by Schwab-Kepner Company checks and that you based that upon the examination of the remittance sheets, have you not? 2858

A. No, sir.

Q. You have testified that various changes would have to be made in your report if the remittances on overdue accounts were to be treated the same as other remittances by customers' checks, have you not?

A. Will you define what you mean by overdue in that question?

Q. I mean the overdue accounts which we have colloquially called in this examination, charge backs.

A. Yes, sir.

Q. And you have testified that a considerable 2859
number of pages in your report would have to be modified and changed or supplemental reports made if it were found that these remittances on overdue accounts were to be treated the same as other remittances by customers' checks, have you not?

A. Yes, sir.

Q. Now, did it ever occur to you as an expert accountant that all of the labor, a good deal of the labor which you did in the preparation of these schedules might have been avoided if you had ex-

2860 amined the records of the Schwab-Kepner Company to ascertain the actual facts?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant.

Objection overruled.

Mr. Wolf: Objected to upon the further ground that the witness had no right to examine documents which were not in evidence or subsequently to be put in evidence by counsel.

Objection overruled.

A. No, sir.

2861 Q. Now, testifying as an expert to-day, would you say that the check books of the Schwab-Kepner Company and the account books of the Schwab-Kepner Company might contain some information or evidence bearing upon that subject?

A. Yes, sir.

Q. And you never examined the check books or the account books of the Schwab-Kepner Company for the purpose of seeing whether or not there was such evidence?

A. No, sir.

Q. Was it because you felt that you were limited by the instructions that you received from your

2862 client?

A. In part.

Q. Now, state what part you felt that you were limited in and what part you felt that you were not?

A. I felt that I was limited because the examination was a limited examination for the purpose of showing the relations, the transactions between two people, not a general examination into the accounts of the Schwab-Kepner Company. The other part was that I had understood that the accounts of the Schwab-Kepner Company were in a deplor-

able and very much mixed up condition and that 2863
all the information that could be obtained direct from these documents was to be obtained from them.

Mr. Wolf: You said these documents, which ones?

A. The documents in evidence.

Q. You testified at the last hearing, sir, that you had read Mr. Dockendorff's examination and that you had read the statement by Dockendorff that the so-called overdues or charge backs were not paid by Schwab-Kepner Company checks, and you also testified that the charge backs did not ap- 2864
pear in the account current submitted by Dockendorff as charges against the Schwab-Kepner Company, now, if your investigation was limited only to the extent of the relations between the Schwab-Kepner Company and Dockendorff, why did you not examine the stubs of the check books of the Schwab-Kepner Company for the purpose of finding whether there were any stubs of checks by the Schwab-Kepner Company to J. E. Dockendorff?

Mr. Wolf: Objected to, Mr. Dockendorff has first started out with a lot of assumptions utterly immaterial to the question.
Overruled. 2865

A. I do not recall having so testified.

Q. Do you recall testifying at the last hearing that you knew that Dockendorff had testified that the charge back accounts were not paid by the Schwab-Kepner Company checks?

Mr. Wolf: I think we ought to wait until we have the record, it is unfair to the witness to ask him whether he recalls having testified so and so until he can show him the record.
Overruled.

2866 A. I do not recall having testified that way.

Q. Don't you recall in answer to my question you said "Yes, I did see that but he also testified to a lot of other things that were not true" and the last part of your answer was stricken out on my motion, do you remember that?

A. Yes, sir.

Q. And don't you remember also making the first part of the statement which remained in the record?

Mr. Wolf: I ask that Mr. Cohen show the witness the question and answer referred to.

2867

Q. And don't you remember that the answer yes, was given to my question whether or not you had not found in Dockendorff's examination testimony by him to the effect that the overdue accounts were paid by customers' checks the same as the other accounts?

A. No, sir.

Q. Don't you recall then, that it was in answer to the question whether or not these overdue accounts were not paid by customers' checks?

A. No, sir.

Q. What is your recollection of the testimony

2868 in that regard?

A. I was asked if I did not recall that Dockendorff had testified at such a page of the testimony that Schwab-Kepner Company checks were not sent in settlement of charge back accounts after a certain date and I was given a particular page of the testimony.

Q. Don't you recall that the question was put to you, "Did you not read at page so and so of Dockendorff's testimony that after the first of June, 1910, the overdue accounts were not paid by Schwab-Kepner Company checks?

Mr. Wolf: It seems to me that the fairer way to examine this witness would be to suspend until he can be shown the testimony. 2869

Objection overruled.

Mr. Wolf: Mr. Cohen has examined the witness with reference to testimony which has been stricken from the record and I now ask that the motion be now denied for the reason that Mr. Cohen has injected it into the record.

Motion denied.

A. I remember answering a question substantially as put by you now. 2870

Q. And do you remember also testifying at the last hearing that there were no charges in the account current in evidence for overdue accounts subsequent to August 1st?

A. No, sir.

Q. What is your recollection of your testimony last week on that point?

A. That it did not contain any charges for charge backs after August 1st.

Q. Mr. Suffern, did you feel that you had no right to examine the check books of the Schwab Kepner Company, when you were making this investigation, for stubs relating to the transactions between the Schwab-Kepner Company and Dockendorff? 2871

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant.

Overruled.

A. I am not sure what you mean by right, Mr. Cohen.

Q. Answer it in your own way. Did you feel that you were limited by the instructions from your client so that you were precluded by those

2872 instructions from examining the check books of the Schwab-Kepner Company for entries relating to the Schwab-Kepner Company and Dockendorff?

Mr. Glen: Isn't that objectionable, the letter is in evidence.

Master: Mr. Cohen is entitled to cross examine him.

A. I did not feel that I was precluded from examining those records.

Q. By your instructions?

A. By my instructions.

Q. Now, if it should appear from the stubs
2873 of the check books of the Schwab-Kepner Company and from the ledger accounts of the Schwab-Kepner Company that the testimony which you read of Dockendorff was true, wouldn't you think today as an expert accountant, that you might have saved the waste of energy involved in the preparation of these voluminous pages by a simple verification of those facts through an examination of the ordinary books of account of the bankrupt corporation?

Mr. Wolf: Objected to, incompetent, immaterial and irrelevant, and containing an assumption not proven.

2874 Overruled.

A. If the books showed that fact I would think it would have saved labor.

Q. And, acting under instructions from Mr. Wolf, it is the fact, is it not, Mr. Suffern, that you denied access to those books to the accountant for Mr. Dockendorff?

Mr. Wolf: What books?

Mr. Cohen: The books of the Schwab-Kepner Company except the three books

which the witness has referred to in his previous examination. 2875

Mr. Wolf: I suppose you mean except the books he used?

Mr. Cohen: Yes.

A. Yes, sir.

Mr. Wolf states that the books of the Schwab-Kepner Company in the possession of the Trustee will be gladly produced at this hearing upon notice or request of counsel for Dockendorff.

Mr. Cohen: We ask you now, Mr. Wolf, to produce the original pink sheets received by Schwab-Kepner Company from John E. Dockendorff. I also call upon you as counsel for the Trustee to produce the check books of the Schwab-Kepner Company from the first of June, 1910, down to the date of the receivership. Also all of the letters of the Schwab-Kepner Company to the various bleacheries during the month of November, 1910; also to produce the cash book of the Schwab-Kepner Company for the period from the first of August, 1910, to the receivership. 2876

Counsel for Mr. Dockendorff states that he now produces a pink slip which was the form in use subsequent to June, 1910, and was sent to the Schwab-Kepner Company by Dockendorff with respect to the overdue accounts and that the form now in evidence of pink slip was the office copy made simultaneously with the pink slip now produced for the purpose of Dockendorff's office records. 2877

Counsel for the Trustee states that he has had no opportunity to investigate this as

2878 yet but will allow this paper to be marked in evidence and if the originals are not found in the possession of the Trustee then proof of the receipt of the paper may be required.

Received in evidence and marked Exhibit P701, March 31st, 1911.

Exhibit reads as follows

Exhibit P701.

J. E. DOCKENDORFF,
20 Broad Street New York,.....191

2879 .....

The total of the following assigned Accounts Receivable now overdue have been in accordance with our agreement charged to your account.

J. E. DOCKENDORFF.

Per.....

Bill Number	Name	Due date	Amount

Q. Now, Mr. Suffern, did you make any examination of the original pink slips sent by Dock-
2880 endorff to the Schwab-Kepner Company?

A. No, sir.

Q. Did you ask for permission to examine them?

A. No, sir.

Q. Did you assume, for the purpose of your examination that the originals were in the same form as the pink sheets that were put in evidence?

A. Yes, sir.

Q. And did you base certain ideas and theories on those pink sheets?

Mr. Wolf: I object to that because it

hasn't appeared that the witness has given vent to any ideas or theories. 2881

Objection overruled.

Question read.

A. I used the pink sheets for the purpose of identifying the items which were contained on them.

Q. Were you affected in your work as an accountant by any of the printed language that was contained upon any of the exhibits that were submitted to you?

A. Yes, sir.

Q. Would it have made any difference to you if instead of seeing the pink sheets that you have, you had seen the pink sheets in the printed form now shown to you, Exhibit P701? 2882

Mr. Wolf: Objected to upon the ground that it is immaterial, irrelevant and incompetent for these reasons, Mr. Suffern was asked to segregate these items and he did segregate them.

Objection overruled.

Question read.

A. I do not think so.

Q. Would you have asked for the contract referred to in the pink sheet, as an expert accountant, before making up your report? 2883

A. I might not have asked for the contract.

Q. And you might have?

A. I might have.

Q. It is true, is it not, that in the preparation of this report you assumed that the charge back accounts after the date appearing in the pink sheets were no longer the property of Dockendorff and that the remittances were remittances by the Schwab-Kepner Company and not remittances by customers transmitted through the Schwab-Kepner Company?

2884 A. Without making the assumption, I showed separately the total of all charge backs subsequent to August 1st, 1910, and deducted them from the balance of the security account as though they did not belong to Mr. Dockendorff.

Q. And how did you treat the remittances on those accounts?

A. The remittances of all accounts which had been charged back which were paid as is shown by this report, called Schwab-Kepner checks were credited the same as other remittances from customers to Dockendorff's account in the account current prepared in this report. They were
2885 shown separately in the large schedule giving the items of all remittances sent to Dockendorff and they were shown separately in various other parts of the report.

Q. Why did you consider in the preparation of the collateral account XC as being a cancellation of collateral after the account had been charged to the Schwab-Kepner Company by J. E. Dockendorff?

A. I have already testified to that.

Q. I would like to have it appear at this point. Why did you consider them as being cancellations of collateral?

2886 A. I considered the charging back of collateral to the Schwab-Kepner Company as shown on the pink sheets as releasing the collateral account from any advance against the collateral.

Q. Don't you understand the difference between the words release and cancellation?

A. Yes, sir.

Q. Now, when you say releasing, do you mean the same as cancellation?

A. No, sir.

Q. What do you understand by the cancellation of collateral, what do you understand by those words?

A. The collateral becoming void. 2887

Q. Do you remember testifying that the charge backs, according to your interpretation of Dockendorff's testimony didn't become void collateral at all?

A. No, sir, I didn't.

Q. You did not testify to that?

A. Not in that way.

Q. Did you not testify in this proceeding "I considered that the charge backs from Mr. Dockendorff's standpoint, released the security as far as any advance against the same was carried and that after the account became a charge back, it was additional security retained by Mr. Dockendorff against which no actual money was loaned but which he still claimed as an account should the same be paid," and later on "And according to your previous testimony you treated those in the accounts as collateral which Mr. Dockendorff continued to hold but upon which he made no further advances, is that correct?" and you answered "That is correct," and "My interpretation of Mr. Dockendorff's testimony that I read was that he did not consider overdue accounts collateral for the purpose of making a loan," did you so testify? 2888

A. As I recall it I did. 2889

Q. Then why, in making up your report, understanding as you say you have, the meaning of the words cancellation of collateral, did you state on page 2, "In the preparation of collateral account Exhibit C, all credit overdues was considered as being a cancellation of collateral after the account had been charged to the Schwab-Kepner Company by J. E. Dockendorff?"

Question withdrawn.

Q. Will you please explain why page 5 would

2890 have to be modified in the particulars that you mentioned at the last examination if the charge back accounts were to be treated as other accounts receivable?

A. If the payments made on the charge backs by what were called in this report Schwab-Kepner checks was the same in interest and manner of payment as the other payments by customers there would be no reason for showing separately the same on page 5 of this report as payments by Schwab-Kepner Company.

Q. Why did you draw up page 5, what were your reasons for drawing it up in that form?

2891 A. Because if the payments of these accounts were made by actual funds of the Schwab-Kepner Company I believed that the amount and particulars of such payments would be of interest to counsel, Mr. Wolf.

Q. Did you know at that time that it was the intention of the counsel to present to the Court and counsel a complete reconstruction of the Dockendorff account?

A. I had no knowledge of his intentions.

Q. But you thought that a classification of these figures as you arranged them on page 5 would be of interest and helpful to counsel for the Trustee?

2892 A. I thought it would be of interest to him, yes, sir.

Q. Did you do that of your own volition or because he asked you to do it?

A. I am uncertain.

Q. Did you do it to help him prove his case or to help him get at the truth?

A. I did it to help him prepare his case.

Q. But not to get at the truth?

A. The whole report was for the purpose of showing the truth of the statements examined.

Q. Yes, but, Mr. Suffern, you don't mean to say,

as an expert accountant, that you can get at the truth by any examination of a part of the testimony that is given in a case and by the examination of some exhibits in the case when there are other exhibits available and other books and documents and other evidence available, do you? 2893

Mr. Wolf: Objected to, that is not a fair question.

Overruled.

A. I think that you can get the actual truth of the condition as shown by the statements that you examine.

Q. You mean that you can get so much of the truth as is revealed by those statements? 2894

A. Yes, sir.

Q. But did you consider it your duty under your retainer to help counsel to get at the truth of it, a part of your duty to get at any other information that might affect or change the evidence that you did examine?

A. Yes, sir.

Q. And was that not the reason that you examined and read a portion of the testimony in this case and conferred with Mr. Williams?

A. It was the reason that I examined that evidence, yes, sir. 2895

Q. And conferred with Mr. Williams?

A. Well, I have never stated any conference.

Q. Did you have conversations with Mr. Williams?

A. Yes, sir.

Q. Did you ask him questions concerning these business transactions?

A. Concerning part of them.

Q. Why did you ask those questions?

A. Because I needed the information.

Q. And you couldn't make up your report without the information?

2896 A. It would have involved work and expense.

Q. Now, if you read part of the testimony and got a part of the information and you regarded it as your duty to assist counsel to get at the truth, why did you not postpone the making of any report or schedules until you had made a complete reading of all of the testimony and examined all of the documents and all of the books that have a bearing upon the facts?

A. Because the testimony was continuous and if I had waited from week to week I would perhaps have waited until now before anything could be prepared. I understood there was urgency in the
2897 preparation of the report.

Q. Did you read the testimony of Kepner?

A. No, sir.

Q. Did you read the testimony of Williams?

A. I read testimony of Williams.

Q. Did you read it all?

A. I don't know.

Q. Did you read the testimony of Mr. Dockendorff?

A. I read testimony of Mr. Dockendorff.

Q. Did you read all of the testimony that was typewritten at the time you prepared this report?

A. I believe that I read all of the testimony of
2898 Mr. Dockendorff, at least up to the time that the work for the report was commenced.

Q. Were you ever present before the Referee when counsel was asking for an adjournment in order that he might examine Mr. Dockendorff in order that he might, in turn, be given information that would enable you to complete your examination?

A. I don't recall his petition to that effect.

Q. Were you ever informed by him that he was going to adjourn the proceedings before the Master here upon the ground that he could not submit

your complete report until he had examined Dock- 2899
endorff?

A. I am not sure whether I heard it or was told it or read it.

Q. Now, you had various conversations with counsel while you were at work on this report, did you not?

A. Yes, sir.

Q. And did he not tell you from time to time that he wanted to prove thus and so and thus and so and wanted to prove something else?

A. I don't think so.

Q. Did he ever say to you, "Now, Mr. Suffern, you are an expert accountant and I want you to 2900
tell me whether I am right or not on certain things and exhaust every bit of information available to you and tell me whether I am right or wrong?"

A. I don't recall his words to that effect.

Q. Or in substance.

A. I should say that at least part of that was said in substance.

Q. Did he ever say to you, "Your firm is a firm of high standing and carries weight and a reconstruction of the Dockendorff account made by you would carry weight with the Court and I want you to do it and I want you as an accountant to be perfectly free to go to every source of informa- 2901
tion that will enable you to make a reconstruction of that account?"

A. No, sir. He wasn't so eulogistic.

Q. Did he ever say he wanted that kind of a thing.

A. I don't think he said just that, Mr. Cohen, no, sir.

Q. If he had said that would you have done any different than you have done in this case, as an expert accountant?

Mr. Wolf: Objected to.

Objection sustained.

2902 Q. Now, taking page 8, Mr. Suffern, you testified that the first item in the last column $341,123.91 did contain overdue accounts, did you not?

A. I don't recall having testified to just that.

Q. It is the fact, is it not?

A. I don't know that it isn't.

Q. Don't you show by one of your exhibits that of that amount over $58,000 was subsequently collected on overdue accounts?

A. Do you mean by overdue, past due or charged back?

Q. Charged back prior to the first of August.

A. I don't recall that column, it may be so.

2903 Q. Look at Schedule No. 1 and see.

A. What is your question?

Question read.

A. Yes, sir, I am looking at the schedule.

Q. Now, don't you find there some $58,000 worth of overdue accounts that were charged back prior to the first of August that were included in the $341,123.91, appearing at the top of the last column on page 8?

A. No, sir.

Q. How much do you find?

A. I don't see it shown.

2904 Q. Nowhere in that schedule?

A. No, sir.

Q. What does the schedule purport to be then?

A. It purports to be a list of accounts receivable to August 1st, paid by what were termed Schwab-Kepner Company checks.

Q. And didn't you intend in that to refer to overdue accounts that were paid by Schwab-Kepner Company checks?

A. Yes, sir.

Q. And how much do they amount to?

A. $59,120.34.

Q. And those were overdue accounts that were 2905
in existence on the first of August, 1910?

A. Yes, sir.

Sworn to before me this 31st
day of March, 1911.

Adjourned to Wednesday, April 5th, 1911, at 11:30 A. M.

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2908 UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before
2909 Edwin G. Adams, as Special Master, on Wednesday, April 12th, 1911, at 11.30 A. M.

PRESENT:

JULIUS HENRY COHEN and GIRARD B TOWNSEND, Attorneys for Petitioner.
RALPH WOLF, Attorney for Receivers and Trustee.

Mr. Cohen: Some time ago Mr. Wolf handed me a paper which he stated Mr. Williams had prepared as an accountant's report as of November 29th, 1910, for the Trustee and requested me to examine same with a
2910 view to having it go into evidence. I have read the document and in the same way that we permitted the report of Suffern & Son to go into evidence we are willing that this shall go into evidence; in other words, as though it were the direct testimony of Mr. Williams, without objection to the form of the testimony and without being binding upon us in the expression of any opinions contained in the report and without binding us as to any theories upon which it was made and subject to any criticism or cross examination we may desire to make.

Received in evidence and marked Exhibit 2911
P801, April 12th, 1911.

Mr. Wolf: After conference with Mr. Williams and as appears in this report of Mr. Williams, I understand from him that the merchandise value was furnished to him from the inventory taken under the direction of the Treasurer of the Schwab-Kepner Company, at cost. Mr. Williams informs me that that is the fact and I so stated to Mr. Cohen and I understood that he would not desire proof of that at all.

Mr. Cohen: I accept Mr. Wolf's statement of the fact without requiring any further 2912
proof of it.

CYRUS WILLIAMS, recalled.

Examination by Mr. Wolf:

Q. You state in this report that the accounts receivable were made up from the several ledgers of the company, is that correct?

A. That is correct.

Q. And that the amount of unfilled shipping orders deducting from the book accounts were furnished to you by the Treasurer?

A. That is correct. The amount is not correct, the amount given to me was furnished by the Treas- 2913
urer, we have found since that it was far short of the acutal amount.

Q. The valuation of furniture and fixtures shown in this report is the value given from the analysis of the accounts in the books, is that correct?

A. That is correct.

Q. This report makes no attempt to put a valuation on any of the assets shown in this report; it merely gives the assets at their full face value, is that correct?

A. Exactly; classifying the accounts receivable.

No attempt was made to put a valuation on any of the assets.

Q. You gave them their full face value?

A. Yes, sir.

Mr. Wolf: I offer in evidence the proofs of claim filed by the creditors.

Mr. Cohen: I object upon the ground that they are incompetent, immaterial and irrelevant and not binding upon Mr. Dockendorff.

Ruling reserved.

Mr. Wolf: The Trustee rests with the exception of accounting work which is in more or less incomplete form by Mr. Suffern. It may be necessary to recall Mr. Williams to elucidate some few things. I do not know of anything at this time and with the exception of proving such facts as the Trustee may be advised are proper to be proven which may be shown by Mr. Dockendorff's examination under Section 21A, we rest.

Mr. Cohen: I understand now that Mr. Suffern will be here at the next examination and we will complete his examination then and I assume that unless Mr. Wolf finds something in Mr. Dockendorff's examination, immediately upon the completion of Mr. Suffern's examination the petitioner will be under obligation to go on with his case, is that correct?

Mr. Wolf: That is correct, I believe. I don't want you to misunderstand me—Mr. Suffern's accounting testimony may make it necessary for me to recall Mr. Williams. I understand that there is certain data which Mr. Williams is preparing for both Mr.

Greey and Mr. Dockendroff and whether or 2917
not Mr. Suffern has covered that or not I
do not know, but if he has I will not need to
recall Mr. Williams.

Sworn to before me this 12th
day of April, 1911.

Adjourned to Monday, April 17th, 1911, at 11.30
A. M.

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2920 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on petition of John E. Dockendorff before Edwin G. Adams, Referee, as Special Master, at No. 165 2921 Broadway, New York City, on Wednesday, April 19th, 1911, at 11.30 A. M.

PRESENT:

JULIUS HENRY COHEN and GIRARD B. TOWNSEND, Attorneys for Petitioner.

RALPH WOLF and GARRARD GLEN, Attorneys for Receivers and Trustee.

Mr. Cohen: Have the stub check books of the Schwab-Kepner Company been produced?

Mr. Wolf: Yes, we have produced all the books that you called for.

2922 PHILIP S. SUFFERN, recalled.

Cross examination by Mr. Cohen:

Q. Have you examined the stub check books of the Schwab-Kepner Company since your last examination?

A. No, sir.

Q. Are they here?

A. They are.

Mr. Wolf: They are not produced by Mr. Suffern, they are produced by the Trustee.

Q. Will you please look through the stubs of 2923
those check books and see if you find any stubs indicating checks sent by the Schwab-Kepner Company to Dockendorff by way of remittances for overdue accounts after June, 1910?

Mr. Wolf: I object upon the ground that these books are not in evidence and I understood that Mr. Cohen does not intend to offer them in evidence.

Objection sustained.

Q. Mr. Suffern will you please examine the stub check books of the Schwab-Kepner Company and tell us whether you find any stubs there for any 2924
checks on the 1st of August covering the items on Exhibit C, page 8 of your report?

Mr. Wolf: Same objection.

Objection sustained.

Q. I will ask you this question then, have you ever at any time made any examination of the check books of the Schwab-Kepner Company for the purpose of determining whether or not there was any evidence in those check books to support the statements in your report?

A. No, sir.

Q. Have you ever at any time examined the ledger 2925
accounts of the Schwab-Kepner Company for the purpose of determining whether or not there was any evidence in those books to support the deductions you made in your report?

A. No, sir.

Q. Have you ever asked for the production of the cancelled check vouchers for the purpose of determining whether or not the deductions in your report were supported by any evidence in those checks?

A. No, sir.

Q. Now, in making up your report, Mr. Suffern,

2926 did you or did you not consider bleachery overdrafts as collateral?

A. I had no knowledge of what constituted, except as I imagined it, a bleachery overdraft and I made no examination of records other than those I stated, which did not show any bleachery overdraft.

Q. So you assumed that all accounts transferred to Beckendorff represented actual collateral?

A. I treated it as though it represented actual collateral, the validity of that collateral I did not attempt to determine.

Q. But the columns which show or were made
2927 for the purpose of showing the comparative condition of the collateral on various dates con ain only the apparent collateral without regard to any circumstances which might change the actual condition of the collateral, isn't that the fact?

A. They were made up for the purpose of showing the apparent collateral on that date and did not take into consideration anything that would affect that collateral unless it was contained in those books that I examined, such as merchandise returned and things of that character.

Q. Mr. Suffern at pages 1009 and 1010 you have testified as follows:

2928

> "Q. Did you intend to prepare Exhibit C, page 8, last column so as to show a comparative statement of the condition of the collateral account between the various dates mentioned in the first column of that page?
>
> A. Yes, sir."

At page 1098 you testified:

> "The actual condition of that account could not have been shown without the information of the cancelled accounts at the bleacheries."

and at page 1085 you testified in answer to ques- 2929
tions as follows:

"Q. Did you prepare, as a matter of fact, any statement which showed a comparison of the condition on those dates?

A. Yes, sir.

Q. Where is that statement?

A. The statement is Exhibit C, page of this report."

And at page 998:

"Q. Did you ask for records which would show anything concerning this $120,000 of 2930
accounts receivable that you became indirectly aware of?

A. I did not become aware of that amount.

Q. Did you ask for any records concerning the amounts that you did become aware of?

A. Yes.

Q. What did you ask for; of whom did you make that request?

A. Mr. Williams."

And at page 1079 you testified as follows:

"Q. Did you make any effort through Mr. 2931
Williams to get any information that would assist you in preparing your report?

A. Yes, sir.

Q. And did you secure such information from Mr. Williams?

A. Yes, sir."

Now, Mr. Suffern, from that testimony, if it was your purpose to prepare Schedule C, page 8 for the purpose that you testified to, if you did go to Mr. Williams for certain information, why did you not follow up your investigation for the purpose of

2932 getting the actual condition rather than the apparent condition in making up that schedule?

Mr. Wolf: It seems to me that question is objectionable and improper. Mr. Cohen has not read the witness the question which produced the answer at page 1098 nor has he read the entire answer, with its qualification.

Referee: The question and the entire answer should be read to the witness.

Mr. Cohen: I will amend the second quotation in my question to read: "Q. Now, if you were to show how Dockendorff's security
2933 was placed at the period covered by the last two weeks of that schedule how could you ascertain those facts without finding out what the amount of the cancelled accounts was at the bleacheries? A. The actual condition of that account could not have been ascertained without the information of the cancelled accounts at the bleacheries; on the other hand this is showing the balance of the account to all intents and purposes from the exhibits in evidence which Dockendorff had knowledge of."

2934 A. In the statement of the purpose of Exhibit C, page 8, in showing the balance in the last column it was the intention to show the balance as far as the records presented by Dockendorff were concerned which would show the collateral assigned to him and on which, according to other parts of this exhibit he was making his loans. There was no intention of showing the validity of the collaterad assigned to him and in your question in which you ask if it wouldn't be necessary to make an examination of the bleachery account to which I answered that it would in order to

obtain the value of the collateral, there was no 2935
intention of stating that that should in any way be done in order to show the results desired to be shown in Exhibit C, which was how much collateral was coming to Dockendorff against which he was making loans and with the various operations of cancellation the balance remaining in his possession.

Q. Well, now, that answer is not clear to me. Let me ask this question of you as an expert accountant—knowing that the collateral consisted of accounts receivable for merchandise sold by the debtor, knowing that there were cancellations of certain shipments, knowing that the question to 2936
be determined was the comparative status of the collateral on various dates, would you, as an expert accountant, say that the last column of page 8, Exhibit C, has any real value for determining the comparative condition.

A. I should say that it had.

Q. What value has it?

A. It has the value of showing the comparative relations on the different dates of the amount of collateral which was in Dockendorff's possession. We have before gone over the fact that the charge backs are eliminated in obtaining this result.

Q. You understood the nature of the collateral, 2937
did you not?

A. Yes, sir.

Q. You know that they were accounts receivable?

A. Yes.

Q. You knew that accounts receivable were not collectable unless the customer actually got the merchandise, did you not?

A. No, sir, in some cases I found that the shipments were not to the customers but to someone else.

2938 Q. Well, you knew that somebody had to be the recipient of the goods before the liability arose?

A. Certainly.

Q. Now, if there was no liability of the customer in any of those cases there was no collateral, didn't you understand that?

A. No, sir, I understood that there was no value to the collateral but there was collateral.

Q. You thought it was collateral just the same whether it had any value or not?

A. I did.

Q. And you thought that an account receivable assigned to Dockendorff when no merchandise had
2939 been shipped to the alleged debtor was nevertheless to be treated as collateral in the hands of Mr. Dockendorff?

A. Unless there was some qualifying circumstance shown in Dockendorff's acceptance of the same.

Q. What do you mean by that?

A. I mean that we received a light showing all collateral assigned to Dockendorff on which he acknowledged various collateral, and the purpose of this was to show the collateral delivered to him and I used his acknowledgement of the collateral which was listed on the sheets. I assumed that it
2940 was collateral for the purpose of preparing this report.

Q. Then you didn't attempt to prepare a statement of the actual condition but simply a statement of theoretical conditions from certain papers in evidence, isn't that the fact?

A. It was theoretical any way it was prepared.

Q. Yes, but you weren't attempting as an accountant to furnish the Court with information concerning the actual condition, but were simply attempting to formulate figures based upon certain exhibits, limiting yourself to those exhibits and

not attempting to get information as to the real condition? 2941

A. I would have been necessary to examine the credit rating of every customer at the date the collateral was assigned if I attempted to show the value of the collateral of each account assigned, and also to find the acknowledgement of that debtor of the goods delivered. There was no such purpose in preparing this report. It was merely to list the accounts which Dockendorff acknowledged receiving and to show how his account was fluctuating as to the collateral in his possession from week to week.

Q. How could you answer that question as to whether or not Dockendorff's position was improved without knowing the actual condition of the collateral which he held at the close of the period you were to cover in your investigation? 2942

Mr. Wolf: I object to that on the ground that it has already been gone into at great length.

Overruled.

A. I made no attempt to answer that question, as I have already testified.

Q. You have answered the question that you made no attempt to answer that question? 2943

A. As an answer to that particular question, in words.

Q. Now, did you as an accountant, attempt to do anything that would answer that question?

A. I did.

Q. Did you attempt to get at the actual condition of the collateral at the final period that was to furnish the basis of the comparison with the previous period?

A. At what time?

Q. Before you testified?

2944 A. I did not before the report was delivered.

Q. You knew, however, that it was feasible for you to get such information by simply asking for it?

A. No, sir. I knew that a large amount of labor would be necessary in order to determine the condition of the collateral as of the end of the period.

Q. Didn't you think as an expert accountant employed by counsel in a matter involving a large sum of money, wherein you were to testify that that labor was justified for the purpose of determining whether or not in truth and in fact
2945 Dockendorff's security was placed in better shape?

A. I felt that it was not incumbent upon me to determine to what extent or what manner of investigation I should make.

Q. And you still think that to-day, as an expert accountant, that it was not incumbent upon you to ascertain the true condition of affairs for the purpose of giving an answer to that question, do you?

Mr. Wolf: I object to the word "still."

Mr. Cohen: I accept the amendment.

A. I still think that it was not incumbent upon
2946 me to do anything more than to discuss what might be necessary in order to get additional information. I was instructed originally to prepare certain figures and if subsequently I found that information from sources not originally known would assist or be of value in forming a conclusion it was not incumbent upon me in my opinion to do a large amount of work without instructions.

Q. You have testified as I quoted to you to-day that you did go to Mr. Williams for the purpose of getting certain information, why did you go

to him for certain information and not for other? 2947

A. The investigation was limited to certain information. I was not requested, for instance, to find out how much they lost on sales to a particular customer. The instructions were to prepare a report showing transactions between Schwab-Kepner Company and John E. Dockendorff. All such questions as I asked Mr. Williams as affecting the accounts between Schwab-Kepner Company, Dockendorff were properly answered.

Q. Didn't you understand when you got that letter of January 25th, 1911, from Hays, Hershfield & Wolf as attorneys for the Trustee, after 2948 making certain statements to you and then stating to you, "Having knowledge of the insolvency on the first of August, 1910, any transfer of security by which Dockendorff bettered his position subsequent to that date would be a preferential transfer. The following should, therefore, be the matters investigated, 1. Subsequent to August 1st, 1910, was Dockendorff's security placed in better shape? 2. To what extent?" Did you not understand from that that it was your business as an accountant to investigate the matters for the purpose of advising your client and for the purpose of testifying as an expert account- 2949 ant here in answer to those two questions?

A. I felt that it was my business to make such examination as would show the actual transactions and in view of that I discussed with Mr. Wolf the character of the documents delivered to us, produced by Mr. Dockendorff, which are in evidence and believing that I understood his desires I prepared a report showing not the condition of the collateral which he held, but from his point of view the collateral that he held so that a person reading the same could make their

2950 own deductions as to any improvement that took place in his collateral account from his standpoint.

Mr. Cohen: I move to strike out the answer and ask that the witness be directed to answer the question.

Referee: I will strike out the last part of the answer. The answer to stand as "I felt that it was my business to make such examination as would show the actual transactions."

Witness: If that is to be all the answer I would not make it just the same way.

2951 Referee: How would you qualify the answer?

A. I would add—in connection with the records examined.

Mr. Cohen: I move to strike that out as not responsive.

Motion denied.

Q. Did you at any time make any investigation to determine the actual condition of Mr. Dockendorff's security on the first of August 1910?

A. You mean by that the value of the security

2952 as of that date?

Q. I want to know whether you made what you regard as an expert accountant, an investigation into the actual condition of this security on the first of August, 1910?

A. No, sir. I accepted the list of collateral assigned as of August 1st, as the basis of the amounts shown in this report, changing them by such differences as were revealed by an examination of the remittance sheets subsequent to August 1st. A verification of the collateral was not made but the greater part of it was proven by subsequent results.

Q. You have already testified that the cancella- 2953
tion of any of these accounts receivable would have reduced the amount of the accounts receivable held by Dockendorff as collateral, you know that, don't you?

A. You mean, do I know that I have so testified?

Q. Do you know that to be the fact—or first of all do you know that you so testified?

Mr. Wolf: I object on the ground that the question is improper in form.

Overruled.

A. I am not sure still, whether you mean that 2954
subsequent cancellations affected the collateral of that date or—

Q. I mean that if on any particular date Mr. Dockendorff held assignments of $120,000, worth of accounts receivable which were cancelled by reason of the fact that the Schwab-Kepner Company had withdrawn the order upon the bleacheries to ship the goods, then to the extent of $120,000. Dockendorff's collateral was lessened, you knew that fact, did you not?

A. I certainly knew that a failure to ship lessened the value of collateral he held.

Q. Didn't it actually lessen the collateral which 2955
he held?

A. It was collateral until it was cancelled by the debtor, Schwab-Kepner Company.

Q. Is that your understanding of the business situation, that a debtor is liable on an account even though he doesn't get the goods until he cancels it.

A. I have tried to make it plain that—

Q. You can answer that yes, or no, is that your understanding?

A. As a general proposition, it is not.

2956 Q. So then, your understanding is, on the other hand that until a debtor gets the merchandise he isn't liable to anybody, isn't that your understanding of it?

A. Unless there is some contract to the contrary.

Q. So that when an account receivable is transferred to a banker the account receivable has no validity until the goods are actually shipped, isn't that your understanding of it?

A. Under all ordinary circumstances, yes.

Q. Now, wasn't it your business if you wanted to find out the actual condition of Dockendorff's
2957 collateral to see what collateral he held to find out whether there was any collateral the goods for which has not been shipped at all?

A. If I had attempted to show—

Q. Not what I had attempted to show, you can answer as to what you understood.

A. I did not consider it my business to show the value of the collateral but the collateral from Dockendorff's standpoint which he was holding and against which he was making advances, regardless of Schwab-Kepner's point of view—

Q. Will you please tell me how you could possibly answer the question whether or not subse-
2958 quent to August 1st, 1910, Dockendorff's security was placed in better shape without knowing what the condition of his security was on August 1st?

A. I made no attempt to answer that question in that way. I presented Exhibit C, page 8 showing the changes in this collateral regardless of its value.

Q. Why didn't you answer the question?

A. According to my best recollection I stated to Mr. Wolf what could be done from the exhibits in evidence with the assistance of such other books as I have testified to, that there could be

presented a report showing the collateral he received, summarized week by week, the various cancellations of that by payments and returned merchandise and any other entries affecting and show the collateral from Dockendorff's point of view week by week in his possession, eliminating after August 1st, the charge backs. I realized that it would be a very expensive proceeding to verify the actual value of collateral at each particular date without proving the different conditions in each sale and believing that this accomplished the initial purpose of showing what Dockendorff was perhaps seeking to do regardless of whether he was accomplishing his purpose, I prepared this Exhibit C. 2959 2960

Q. So, even to-day, you can't testify as an accountant in answer to the question that Mr. Wolf put to you in this letter of January 25th, 1911, those two questions?

A. I have been able to present in tabulated form figures which will materially assist anyone studying the same in arriving at an answer to those questions, which I did not attempt to make categorically. It may not contain what you think the answer should contain.

Mr. Cohen: I move that the answer be stricken out as not responsive. 2961

Mr. Wolf: I object to anything but the last sentence being stricken out.

Referee: The last sentence will be stricken out.

Q. What is your answer to-day to those questions?

A. Entirely irrespective of the report, Mr. Cohen?

Q. Take anything you like into consideration.

A. I realize from Dockendorff's testimony this

2962 morning that a charge back of $135,000 of bad accounts which he deducted from the good collateral which he received would not be considered in determining the advances on the good collateral. At regular intervals, therfore, he received goods collateral for all this amount, $135,000. Against that various amounts were paid, but those were in turn paid back to Schwab-Kepner Company so that they did not affect the entire deduction of these charge backs for the period.

Q. And what is your answer to the question?

A. That is my answer.

Q. Was his security placed in better shape?

2963 A. He certainly bettered it to the extent of all accounts he charged back as he deducted that from goods accounts in determining the advances, therefore, for every account he charged back he got fresh collateral.

Q. Do you know of any other way than that in which his security was placed in better shape?

A. In addition to the accounts charged back there were various credits or allowances made subsequent to August 1st, reducing the accounts and those allowances entered into the deduction of good collateral received which would affect the condition.

2964 Q. Now, have you stated everything that you regard as placing Dockendorff's security in better shape?

A. I do not know what other contracts or special assignments or anything of that sort may have been received by Dockendorff during the period which gives him an additional lien.

Q. But confining yourself to the information and data which you have had, I ask you now whether you know of any other bettering of Dockendorff's collateral situation than that which you have testified to this morning?

A. None that I think of at the moment, Mr. 2965
Cohen.

Q. And you think because Dockendorff had charge back accounts amounting to $135,000 and after that date got other accounts receivable that that was bettering his condition, do you?

A. Since he replaced bad with good, yes, sir.

Q. Did you take into account the fact that he was giving some money by way of additional advances to the Schwab-Kepner Company upon those accounts?

A. According to the testimony he deducted the charge backs, therefore he made no advances against those accounts. 2966

Q. But aside from the testimony which you heard this morning you had no such information, had you?

A. I had by the cross examination that I have been under evolved that as theory which has been substantiated.

Q. You evolved that as a theory which you communicated to counsel since your cross examination, is that the fact?

A. To the best of my recollection, it is.

Q. So that before you evolved that theory as the result of your cross examination you knew of no way in which Dockendorff's security subsequent 2967
to August 1, 1910, was placed in better shape?

A. That is not quite right, I still treated the amounts that he charged back as a bettering of his condition and also such credit allowances and merchandise returned as affected the accounts of August 1st as a bettering of security, but I wasn't until I was cross examined sure of the method in which it operated to affect the good accounts which were assigned to him practically daily.

Q. Have you attempted to make a tabulation of the relation of collateral to loans at the various

2968 periods to show the percentage of margin that Dockendorff held as total security?

A. The combination of the final balances of Exhibit B—

Q. I know where we will go for it, but have you attempted to make any such percentage comparison?

Mr. Wolf: I object; the witness should be allowed to answer the question.

Referee: I think he can answer that by yes or no.

A. No, no percentage tabulation.

2969 Q. Don't you know, Mr. Suffern, that on August 1st the percentage of loan to security account according to your own figures was 50 per cent. and the percentage of margin was 50 per cent., while on the 28th of November without allowing for any deduction for cancellation at the bleacheries the percentage of loan to security accounts was 56 per cent., and the percentage of margin was 44 per cent.?

Mr. Wolf: He has just testified that he hadn't figured it.

Q. I am asking if he doesn't know that it was

2970 that or approximately that.

A. I have not figured the percentage, Mr. Cohen.

Q. Don't you know that on the 1st of August, 1910, the balance of the loan account was $170,018.80 as shown by your own exhibit and on October 29th the balance of loan account was $306,251.40, an increase of $136,232.67 or 80 per cent. and that on August 1st the balance security account, according to your own figures, was $311,123.91 and on October 29th even including the $120,000 of cancellations the balance security account was $500,573.16 an increase of $159,429.25

or only 47 per cent., so that the increase in loan 2971
was greater in ratio than the collateral, that the increase in loan was 86 per cent. on the increase in the collateral and that the percentage of margin on loan decreased from fifty to thirty-nine per cent., don't you know that?

A. Without checking up those computations I should think that they were approximately correct.

Q. Now, wouldn't you say, as an expert accountant, from those figures that Dockendorff's security was placed in worse shape rather than in better shape, taking your own figures?

2972

Mr. Wolf: You mean on those dates?

Mr. Cohen: October 29th, yes.

A. Not necessarily, if the value of the security held was better than the value of the security held at the beginning of the period; he could have bettered his position and reduced the percentage of margin. The reason I am putting that in is that it shows by the amounts he charged and the credits against the old accounts that a great many of the accounts held at the beginning of the period had been cancelled.

Q. Don't you know that if on the first of August, 1910, Dockendorff had stopped lending any money 2973
to the Schwab-Kepner Company according to your own analysis of his remittance sheets and his collateral sheets that he would have received more than enough to pay the $170,018.80 which was due to him at that time?

A. Yes, sir.

Q. You know that to be the fact?

A. I know that to be the fact, but I believe there is a slight difference in computation.

Q. In other words, if Dockendorff had stopped doing business with the Schwab-Kepner Company

2974 on the first of August he would have been paid in full and more than paid in full everything that they owed him out of the collateral that he held on that date, isn't that so?

A. Yes, sir, it is so with the exception, of course, that we are using the balance which he shows in the account current, not considering any personal relations between them.

Q. You haven't made any attempt to see how much of his collateral is affected by cancellations at the bleacheries at all, have you?

A. I have made an attempt to show the amount of cancellations at the bleacheries at the end of

2975 the period.

Q. You have made such an investigation?

A. I have made an attempt, yes, sir.

Q. Do you know how much it amounted to?

A. I couldn't state now.

Recess Taken.

After Recess.

PHILIP S. SUFFERN, examination continued.

By Mr. Cohen:

2976 Q. Now, Mr. Suffern, will you turn to Exhibit A, page 5 of your report, and will you please tell me why you arranged the figures in the order of presentation contained on that page?

A. As I recall it there was no cause for the order of the presentation, a revision of some one or two of those would not affect it in any way, to my mind.

Q. Why did you arrange the figures so as to produce totals, what do the totals mean?

A. The totals are as shown, totals of various amounts and other various amounts. A reading of the text of that page would be necessary in order

to show just the meaning of the totals of the various figures extending into the totaling column. 2977

Q. What paragraph of Mr. Wolf's letter to Mr. Harding were you endeavoring to comply with in making up this page 5?

A. I don't know as page 5 of the report was in answer to any particular paragraph of Mr. Wolf's letter under date of January 25th, 1911.

Q. What question or questions was it to answer?

A. It was to show if the payments of charge backs had been paid by funds of the Schwab-Kepner Company, their amount; if the accounts receivable had been shipped subsequent to the date of the assignment, the amount of such as were 2978 paid and the amount that remained open at the end of the period.

Q. But you had those totals in other portions of the report?

A. I had, yes.

Q. Why did you gather them together and total them up?

A. The totals are not specially significant, but they were gathered together as being in my opinion the points that Mr. Wolf would like to see at a glance in opening the report.

Q. Then it was put in there for the purpose of assisting Mr. Wolf in his understanding and prep- 2979 aration of the case?

A. Not necessarily for the purpose of assisting in the preparation, but for the purpose of showing what information I believe he desired as quickly as possible.

Q. What evidence was it to furnish the Court to assist the Court in determining the issues in this case?

A. I don't know that any particular issues are open in which the Court will use the totals on this page, there is no reference made to it in the

2980 text of the report and no deduction is made in the text of the report stating that the total means so and so or so and so.

Q. What particular point in the case do you understand as an expert helps either the Court or counsel?

Mr. Wolf: I object to that.

Overruled.

A. Each particular item that was extended into the totaling column was put there for the purpose of bringing out a fact; therefore there are as many different reasons as there are figures in the totals.

2981 Q. But there was absolutely no reason for the figures at the bottom $259,671.35 and $134,181.97?

A. It was for the convenience of anyone examining the page.

Q. It doesn't mean anything at all?

A. Certainly, it does, it means that it is the total of the page and if the various figures, and if the various figures have any meaning and each one of them has the same influence the total is there before you.

Q. But you had no theory or hypothesis upon which you prepared that page and arranged those figures in that way?

2982 A. Not in that order. There was in the preparation of the page.

Q. What was the theory for the preparation of the page?

A. It was, as I testified, my understanding of the figures contained in the other schedules of the report that bore in some way a relation to the questions and information desired by Mr. Wolf.

Q. What do you mean by the questions desired by Mr. Wolf?

A. We have already gone over the letter of January 25th and found therein various questions asked.

Q. What bearing has this page 5 on the questions 2983
on page 2 of that letter, the questions 1 and 2 "Subsequent to August 1st, 1910, was Dockendorff's security placed in better shape?" and "To what extent?" what bearing had page 5 on those questions?

A. It would have no relation to the value of the security held at any time by Dockendorff. The majority of the figures show methods of payment or shipment or something of that kind which were sufficiently unusual to be treated in this manner.

Q. At pages 1058 and 1059 you testified that the substance of what Mr. Wolf said to you was 2984
"that I," meaning yourself, "was instructed to prepare from this table full of data a reconstruction of the accounts showing the balances in the collateral account, account current, etc., and to in general prepare in as lucid a form as possible summaries showing the results of an examination of these papers which Mr. Wolf said he didn't want to in detail go through himself." Does page 5 represent such a reconstruction of the accounts?

A. No, sir. Page 5 represents the grouping of the various reconstructions of the accounts shown in detail in the other schedules of the report.

Q. Precisely what did you mean at page 1059 2985
when you used the words "reconstruction of the accounts" did you mean such as an expert accountant would make for the purpose of showing the real condition of affairs or did you mean a reconstruction of the accounts for the purpose of enabling Mr. Wolf to prepare his case for trial?

Mr. Wolf: I feel quite sure that that question has been answered at least once and I object upon the ground that it is a repetition.

Objection withdrawn.

Question read.

2986 A. I meant a reconstruction and corroboration of the figures actually given in the documents and books examined, producing the totals of all accounts, all remittances sent, all credits given and to present the result of these summaries in a way which left no doubt as to their original character. I did not go into a complete examination of everything that in any way affected it because I did not consider that I was warranted in incurring expense on needless, perhaps, lines of inquiry, and therefore I endeavored, as plainly as possible, to state just what papers and books entered into the preparation of the report and to
2987 what extent it was a complete and accurate report as far as such minor corrections as are shown.

Q. At the beginning of your answer you used the same word, reconstruction, now reconstruction has a definite English meaning and I should like to know what meaning you attribute to the word in using it in your answers? Do you mean a putting together for the purpose of demonstration or for the purpose of showing the actual facts?

A. In using the word reconstruction I used it because it had been employed in the questions I did not mean an analysis of the particular accounts sent to Dockendorff, determining their
2988 validity or anything of the kind; it was merely a segregation of the various parts of this according to the headings of the report and it is as such that I wish the report to be considered.

Q. You know, of course, as an expert, that to prepare a collateral account that would show the precise and actual condition of affairs from week to week so as to enable the Court to determine whether or not the banker's condition was improved or not improved, that the fair thing to do

would be to ascertain the actual condition at the end of every week and arrange them that way? 2989

Mr. Wolf: Objected to, incompetent, irrelevant and immaterial.

Overruled.

A. Is that in the form of a question?

Q. Yes.

A. I think it would depend on what one was endeavoring to show; if this was for the purpose of showing the value of the collateral on each date such an examination as you state might be necessary; if it was to show the collateral according to the records of the petitioner I don't think 2990 it is necessary to cover that point.

Q. Now, Mr. Wolf in his letter to you said, on page 2, if you will look at the paragraph before the last "At this time Dockendorff had absolute knowledge that the Schwab-Kepner Company was totally insolvent and continued to make advances. The only motive that I can imagine is that he knew that his account was in a precarious condition. This, however, is only an inference and remains to be proven from his books. He thought, probably, that by continuing to make advances he could straighten his account out and absolutely clinch his security and thus 2991 secure payment of his debt in full." Did you understand when you read that that it was part of your job as an expert accountant to make the investigation to prove these facts or disprove them from Dockendorff's books?

A. Yes, sir, I understood that was one of the things that he wished to do.

Q. Did you make such an investigation?

A. I did.

Q. Where do we find in your report the answer to that question?

2992 A. The last column of page 8 is the partial answer.

Q. You think the last column of page 8 of Exhibit C' answers that question?

A. In part.

Q. What do you mean by that?

A. It doesn't show the amount of advances he was making against the collateral, it is shown there in its total.

Q. You think the last column of page 8 Exhibit C' is the answer to this paragraph, do you?

A. I have already testified that I do not think that the last column of page 8 is a particular
2993 and definite answer to any one question of Mr. Wolf's. I did not attempt to answer categorically the question he asked or the statements he made; I endeavored to prepare the report so that he could see the things which it was possible to prepare from the records examined.

Q. That is a very long answer but you stated a moment ago when I asked you where we could find in your report the answer to the question I read to you at length that it was partially in the last column of page 8; is the rest of the answer to be found anywhere in the report?

A. I have endeavored to make it plain that I
2994 didn't seek to answer that question as the answer, the various schedules show different things.

Q. Did you appreciate what is involved in this litigation when you started in with your work, Mr. Suffern?

A. I realized that it was of large moment—the extent of what was involved wasn't known to me until afterwards.

Q. Did you think that you should, as an accountant, devote your work toward clarifying these issues?

A. I did, but I believed that the burden on me

as an accountant was to show the things which 2995
were most important to be shown in those records
which I examined.

Q. Were you influenced at all in any way by the instructions which you received in this letter of the 25th of January?

A. Yes, sir.

Q. Now, at the top of page 2 you will see this paragraph "The practice, however, seems to have been that deliveries of merchandise were made by the Schwab-Kepner Company to different bleacheries in different parts of the United States, and Dockendorff advanced moneys on orders of the
customers of the Schwab-Kepner Company and 2996
thereafter the orders were transmitted to the bleacheries, the goods shipped, and then, for the first time, the outstanding accounts came into existence." Were you influenced by that paragraph?

A. Yes, sir.

Q. And notwithstanding that fact you treated the assigned accounts to Dockendorff as collateral in his hands, regardless of whether or not the goods were actually shipped from the bleacheries?

A. No, sir, I have prepared different parts of the report to show different things. On page 8
which is the collateral accounts they were in- 2997
cluded in the collateral regardless of when shipped; in a special schedule they are segregated showing the shipment of such accounts as were assigned prior to the date of shipment.

Q. How are we to regard your report, as prepared upon the theory that those accounts were collateral or that they were not collateral?

Mr. Wolf: Objected to on the ground that different people might regard them in a different way.

Overruled.

2998 A. On page 5, there are included as I recall it all shipments which were made subsequent to the date of assignment; all these shipments as of August 1st which were subsequent to August 1st are not being excluded as collateral but they are being put in these schedules so that any one can see them in their segregated total. What disposition is to be made of those does not rest with me. On the collateral schedules they are included as collateral regardless of the date when they were shipped.

Q. Then your answer to the question is that you treated them both as collateral and not as
2999 collateral, leaving the theory to be determined by someone else?

A. No, sir. They are treated as collateral; the value of the collateral and what legal points may be involved I do not know, but they are treated as collateral throughout.

Q. Treated as collateral held by Mr. Dockendorff as security for advances throughout your report, is that your answer?

A. I did not go into the question of security. They were held by Mr. Dockendorff and some may have been held not as security for advances, they are merely a segregation of accounts shipped
3000 subsequent to the date of assignment.

Q. We may understand then from your answer that there is no clear statement anywhere in your report that will enable the Court to determine how much of these accounts you have treated as collateral and how much you didn't?

A. I beg to differ. I have tried to make it plain that I have treated it all and I considered it all as collateral in the preparation of this page 8 which is the collateral account. For instance Exhibit B on page 7 has no reference to collateral and of course there is nothing shown as to those shipments on this page and there are other places

the same way but in a collateral account they are 3001
included in the collateral.

Q. Didn't you think now, on reflecting, that in treating those accounts as collateral you were disregarding the statements in Mr. Wolf's letter to you that according to the practice the outstanding accounts came into existence only when the goods were shipped?

A. No, sir. I tried to make it plain that I prepared this collateral account showing the collateral according to the exhibits produced by Dockendorff, showing as far as his records would show the collateral that he had on hand, with the treatment of the charge backs which we 3002
have explained; as to the value of the collateral I made no comments and if some of them had not been created at the time they were assigned such segregation of the items shown enables anyone after the law on the question is decided to tell what disposition to make of them.

Q. But you testified a few moments ago that you were affected by what you read in this letter, that the outstanding accounts did not come into existence until after the goods were shipped; what justification did you have in any part of your report for treating those accounts as collateral held by Dockendorff? 3003

A. If I attempted to show whether the collateral held by Dockendorff was valid collateral I presume I would have had no justification until that point brought up by Mr. Wolf in his letter was definitely settled. I did not attempt to show a collateral statement showing the validity of the collateral, but only the collateral that he had received which had been assigned to him, minus such cancellations as came through payments and credits.

Q. Do you think as an expert accountant that

3804 it is a fair thing to charge a man for the purpose of comparing his condition on a given day with collateral that has no validity?

A. It would influence his action and I endeavored to bring out his standpoint as to the collateral.

Q. Then after all you prepared this Exhibit C page 8 for the purpose, not showing the actual condition of affairs but for the purpose of indicating the standpoint of Deckendorff, is that true?

A. The standpoint in regard to what?

Q. I simply used your own language.

A. I didn't prepare it to indicate his standpoint
3805 with regard to money advanced, what I mean—is there some particular expression?

Q. You used the expression "from the standpoint of Deckendorff." I want to know if it is true that that schedule was prepared from that point of view?

No answer.

Q. I will put the question in another way. You have testified that it doesn't purport to show the actual condition because you didn't investigate into that; you also testified that you regarded it as perfectly proper to make a schedule up in that way if it was for the purpose of showing the standpoint
3806 of the banker; now I ask you is it the fact that you prepared it solely for the purpose of showing what you regard to be the standpoint of Deckendorff?

A. No, sir, I also prepared it for the purpose of assisting counsel to any extent to which this schedule would be of value.

Q. But not for the purpose of assisting the Court in determining the actual condition of affairs?

A. Not the actual condition of the collateral but the amount of collateral which he held.

Q. Which he thought he held? 3007

A. Which he thought he held.

Q. Although Mr. Wolf had written you to the effect that collateral for goods that had not been shipped from the mills was no collateral at all, is that right?

Mr Wolf: I don't see that in the letter.

Question withdrawn.

Q. Although Mr. Wolf had written you that the outstanding accounts only came into existence after the goods were shipped from the bleacheries?

A. Yes, sir.

Q. Did it ever occur to you in making your ex- 3008
amination, Mr. Suffern, that if Deckendorff got as security for advance today accounts receivable aggregating say $10,000 which he considered in making his advances that if those goods were shipped to-morrow when Deckendorff was making advances the day before to-morrow he was taking these accounts into consideration?

Mr. Wolf: Objected to unless it is shown that it has something to do with the report which Mr. Suffern has made.

Mr. Cohen: I will connect it.

Objection overruled.

Question read. 3009

Mr. Cohen: I think you can answer that question yes or no.

A. Practically that did occur.

Q. And notwithstanding that that did occur to you you added up all together all of the goods where the shipment appeared to you to be after the date of the assignment of the account and made a total of them, is that right?

A. Yes, sir.

Q. Now, will you please tell us of what value

3010 that total is to the Court or to anybody else in determining the condition of Dockendorff's security?

A. I should say that it represented the actual condition, because in the testimony this morning Mr. Wolf asked Mr. Dockendorff what would happen in the case of accounts that were assigned to him that day and he made no qualification that he would see whether they were shipped, but he would immediately loan some money on the accounts assigned. I think having heard that testimony that he was testifying to his practice and that therefore the report is correct.

Q. So that you are basing your report now, pre-
3011 pared a month or so ago upon testimony heard this morning before you went on the stand again, sustaining it, is that it?

A. No, sir.

Q. Well I ask you now to state when you prepared this report, in the light of the fact it did occur to you that accounts receivable where goods were shipped subsequently might be used for the basis of advances after the goods were shipped, of what value it was to prepare page upon page of schedules which would show the total amount of these goods shipped after the date of the assignment of the accounts?

3012 A. In the parts of the testimony that I read I had understood Dockendorff to testify, in general, this isn't referring to any particular page, that was his custom to advance upon the accounts which were assigned to him and came down on the sheets and I was unable to prove any particular date in which the process was reversed and he did not advance until he had evidence of the shipment of the account.

Q. Suppose the Court should hold that when Dockendorff advanced money he made advances against all the security that he then had in his

hands whether or not he had received it on that 3013
day or the day before or the day before that, of what value would your report be to the Court in determining the amount of collateral which Dockendorff held at the close of the business transactions.

Mr. Wolf: I object upon the ground that it is incompetent, immaterial and irrelevant and called for the legal conclusion of the witness.

Overruled.

A. It would not affect the result as shown in the balance of security account as given in the last 3014
column on page 8.

Mr. Cohen: I move to strike out the answer as not responsive.

Motion denied.

Q. Do you want us to understand from your answers that it makes no difference what legal theory the Court adopts the figures are so segregated in your report that the Court can find the information that it want?

A. I didn't attempt to give just that series of answers. I meant them to be that the Court could understand the figures that he found—he might 3015
want to find something that wasn't examined by us.

Q. Suppose the Court decides finally that when Dockendorff advanced moneys, say $10,000 to-day he had the right to retain as security for that $10,000 all the collateral which he had received before to-day including accounts receivable received last week for goods that were subsequently shipped but shipped before to-day including accounts and overdue accounts, where should the Court turn in your report if at all to any page that will enable the Court to determine on that theory what security

3016 Dockendorff held on a particular day and the amount of advances due to him on that particular day?

A. I have not attempted anywhere in this report to show day by day the computation made by Dockendorff to determine the amount of advances to which Schwab-Kepner was entitled.

Q. That is not the question that I asked. I asked where the Court would find in your report, assuming the theory that I have stated to you, day by day, the total amount of collateral held by Dockendorff on that theory with the total amount of advances made by him up to that time?

3017 A. There is no segregated total column showing the amount of collateral held by Dockendorff day by day.

Q. Or week by week?

A. There is showing the collateral held by Dockendorff week by week from which is eliminated the charge backs and I have already testified how to include them.

Q. It is the fact then, Mr. Suffern, that all of your schedules have been prepared upon the theory that the charge backs were not held by Dockendorff as collateral security for the amount of his advances and that the accounts receivable after the

3018 goods were shipped were not treated as collateral held by Dockendorff?

A. Why, no, sir. I have never stated that the accounts receivable after they were shipped were not held by Dockendorff as collateral. All the collateral that was assigned to him is shown in the collateral column of page 8 regardless of the date on which it was shipped.

Q. Then what was the purpose of your preparing these elaborate schedules showing the amounts of goods not shipped at the time of the assignment?

A. That was for the purpose of complying with one of the written questions or an interpretation of

the general line of instructions that I had received 3019
from Mr. Wolf.

Q. What was that written question and that general interpretation?

A. The interpretation of the instructions or questions was that I believe Mr. Wolf wanted to know all accounts shipped subsequent to the date of the assignment of those accounts to Dockendorff after August 1st, 1910.

Q. That states what Mr. Wolf said but it doesn't state what the reason for it was.

Mr. Wolf: You don't want my reason for it.

3020

Q. Do you know of any reason?

Mr. Wolf: Objected to.

Question withdrawn.

Q. Did you have in mind at the time you prepared that report any reason for the request of Mr. Wolf?

Mr. Wolf: Objected to.

Objection sustained.

Q. What was the question that you referred to besides the interpretation?

A. I don't know that I find the question in this letter of instructions or whether it was my interpretation of several paragraphs together or the result of an elucidation of the letter by Mr. Wolf. 3021

Q. Then state in your own way what your understanding of the question was?

Mr. Wolf: Objected to, he has already given the answer that he prepared it on what he understood to be the instructions.

Overruled.

Referee: I take it, Mr. Cohen, that this refers to what his understanding was of the question which Mr. Wolf asked?

Mr. Cohen: Yes, sir.

3022 A. My understanding was that I was instructed to prepare in some segregated form a list of the accounts which were shipped subsequent to the date of the assignment of the same to Dockendorff. At the moment that is all I recall on that particular point.

Q. Was any statement made to you as to the purpose of preparing such a segregation?

Mr. Wolf: Objected to upon the ground that it is utterly immaterial what my purpose was.

Objection sustained.

3023 Q. Now, you said in answer to some of the questions that I asked you that the expensiveness of making a complete investigation for the purpose of determining the actual condition was a factor in determining whether or not you should do such work, did you consider the expensiveness of making these segregations as directed by Mr. Wolf?

Mr. Wolf: Objecteded to upon the ground that it is incompetent, immaterial and irrelevant.

Objection sustained.

Q. Did you ever discuss with Mr. Wolf the desira-
3024 bility of ascertaining the actual condition of affairs and utilizing the time for the purpose of ascertaining the actual condition and answering the questions put to you in this letter rather than to compile at labor and expense figures which he directed you to compile?

Mr. Wolf: Same objection and upon the additional ground that it has been gone over at least once.

Overruled.

A. I did not have a conversation following the lines in order of the question.

Q. Did you have any conversation of that kind with Mr. Wolf? 3025

A. The consolidation of several interviews with Mr. Wolf would produce such a conversation.

Q. That is, taking a number of conversations together you did have such a conversation with Mr. Wolf?

Mr. Wolf: He said a conversation on that subject.

Mr. Cohen: I am asking whether that is the fact.

A. You don't quite understand my answer I think. 3026

Q. Give your own explanation of it?

A. At different times the question as to the length of the work under way was taken up with Mr. Wolf and as to what it was accomplishing. I stated that it would be rather lengthy, that Mr. Dockendorff on the stand had said that it would take three weeks to prepare the statement of the collateral on any one day and that without additional examination it would be impossible to work out everything that he desired in time for this report. I think that covers about what you asked.

Q. So it was determined that in view of the limitation of time you would merely prepare the information which Mr. Wolf requested you to prepare, such segregation of the items in such form as he desired, is that correct? 3027

A. No, sir, but that such parts of it as I could not prepare should be eliminated, but the full examination of everything that I examined to which I have testified covering these parts of the report which I was going to make in partial support of his letter of instructions.

Q. Did you know at the time you were making this report that you were going to be put upon the witness stand to testify?

3028 A. I do not know that I knew that.

Q. Did you know that your report was to be used in this case for the purpose of determining the issues in the case or assisting in determining them?

A. I assumed that it would be used in the case in Court.

Q. And you thought as an accountant that it was perfectly proper for you to present your report to be used in evidence headed, "Collateral Account August 1st to November 29th, 1910," with the words, "Balance security account" in the last column that did not in truth and in fact disclose
3029 the actual condition?

Mr. Wolf: Objected to on the ground that it is an improper assumption from the witness's testimony and as having already been gone over at great length.

Objection sustained.

Q. In the preparation of your report did you at any place in the report make the assumption that the loans by Dockendorff were loans on the security turned over to him at the particular time that the loans were made?

A. In a negative way, I did.

3030 Q. Where did you in a negative way?

A. I nowhere made that direct assumption but I did show such shipments as were made of collateral subsequent to the date of assignment so that if that inference is to be drawn, an assumption taken by anyone it could readily be found in the report.

Q. Did you treat the account between Dockendorff and Schwab-Kepner as a running account?

A. Do you mean the account current?

Q. The whole account, the whole transaction between Dockendorff and the Schwab-Kepner Com-

pany, did you treat it as a running account in 3031
making up your report?

A. In showing the results week by week I put it in consecutive form, to that extent showing it as a running account. I prepared no particular schedule showing it as a running account or balance but merely gave the balance at the end of each period of a week.

Q. That was only for the purpose of classification, was it not?

A. You mean classifying it week by week?

Q. Yes.

A. Yes, sir.

Q. Did you make any assumption when prepar- 3032
ing your report that there was any accounting between Dockendorff and the Schwab-Kepner Company at the end of each week of the character indicated in your report?

A. No such assumption is intended. That was an arbitrary division.

Q. Then at no time in preparing your report did you assume a condition of specific loans against specific collateral, did you?

A. In the preparation of this analysis of collateral I showed in other columns the amount of advances made daily or as often as they were made and they are shown against the collateral that 3033
was assigned to him and other merchandise credits are likewise shown produced into this total week by week. They are shown as near as was possible day by day but not in a total form and carried in a total into the summary of these sheets.

Q. For the purpose of preparing that exhibit did you make the assumption that the loans which you indicate on any given day were loans made against the collateral which you indicate on that day or was that merely an arbitrary arrangement for the purpose of elucidating the account?

3034 A. It was a combination of each.

Q. In what respect did you make the assumption that the loans on that particular date were made against the specific security received on that particular date?

A. As was testified by me this morning, I knew in a general way that other things besides the actual security advanced Dockendorff affected the loans which he made each day and therefore in order to put the security assigned and the amount advanced close together I arranged this analysis of collateral with the intention of bringing the two next each other; other things besides the actual
3035 schedules sent to Dockendorff affected the loan on that day.

Q. Do you think that is a presentation of the data so that the Court can adopt whatever legal theory it finally adopts and find the information from these elaborately prepared schedules? You can answer that yes or no.

A. I think that in conjunction with the other schedules in the report it should furnish him the data necessary to make everything other than daily proof of the amount loaned by Dockendorff.

Q. Taking the schedule by itself I ask you now, that large schedule and assuming that the Referee
3036 doesn't go through the accounting work of adding and subtracting from other schedules, do you think that is a presentation of the data so that the Court can adopt whatever legal theory it finally adopts and find the information from these elaborately prepared schedules?

A. I don't feel that I am competent to state what basis the Court is going to require to formulate his theory. I think to assist in forming a theory it should serve the purpose, but whether it is to go beyond that I cannot tell without further questions from you.

Q. Assuming that the Court seeks to know, having formulated its own theory, what collateral Mr. Dockendorff advanced against on any particular day, where will it find in that schedule now before you the information that will answer the question? 3037

A. I should be very glad if I could find in here any positive proof as to the collateral against which Dockendorff was advancing every day. The best that it does is to show the collateral which he received and such other changes and credits as affect the collateral and the amount he advanced.

Q. In other words that schedule does not help the Court at all, in itself, in furnishing the total amount of collateral on any given day which Dockendorff held against his advances? 3038

Mr. Wolf: Objected to upon the ground that it assumes something which is not in evidence and Mr. Suffern has testified that that shows the amount which Dockendorff loaned to the Schwab-Kepner Company day by day and the amounts which they transferred day by day less credits and deductions.

Objection overruled.

Question read. 3039

A. It certainly should help the Court in determining it. It doesn't show it in absolutely definite results but if he added any given amounts it should help him in finding it.

Q. You knew that there were other factors that entered into it on that particular day besides the collateral assigned on that day, you so testified, did you not?

A. Yes, sir.

Q. And how, without analyzing the collateral on each day, taking past collateral plus present

3040 collateral, taking past advances plus present advances, less remittances by the Schwab-Kepner Company, can you tell what the condition of the account was on any particular day?

A. The whole daily collateral balance is not embodied in the large schedule, the analysis of collateral schedule. It would be necessary, in addition to various figures shown in total day by day in this report to take such charge backs as are shown separately elsewhere.

Q. In other words, there would have to be constructed entirely new schedules if the Court adopted that theory?

3041 A. To determine the daily collateral held?

Q. Yes.

A. There would—one schedule I think would do it, not schedules.

Q. In other words, one schedule approximately covering as many pages as this Schedule R502?

A. No, sir, a schedule very much smaller would show it because the daily balances are given here and as well all of the details of the separate accounts. That would not be necessary in order to get the balance at the end of the day.

Q. Assuming that the Court decides that Dockendorff was entitled to treat as collateral se-

3042 curity for any advances that he made all of the collateral which he had received prior to that day, wouldn't it be necessary to reconstruct an entirely different schedule than you have constructed for the purpose of making a comparison between the condition of Dockendorff on August 1st, and on any particular day thereafter?

A. It would be necessary, but it would be a very simple matter by using the balance at the end of the previous week.

Q. But you haven't done it?

A. That was not done.

Q. Then it isn't true that these schedules have been prepared so that alternative legal theories may be applied and the schedules present the results, is it? 3043

A. It is. There has been no reason—I have never shown any result day by day, they are week by week. The Court can, from this report, prepare its own deductions week by week. Merely because it doesn't give the daily balances is no reason for stating that it cannot be used for any other deduction which may have been desired by counsel for the Trustee.

Q. Then, you mean that you can do it by taking one of your schedules and putting it beside another and adding figures together? 3044

A. It depends upon what you are considering.

Q. I mean assuming that the Court found the legal theory a little bit different from Mr. Wolf's theory and wants to utilize this elaborate work you have done, it could not do so except by doing the accountancy job of taking one schedule and placing it beside another schedule and adding up columns week by week, isn't that so?

A. It is not. He could do it just as easily without doing that unless he wished information not contained on some one of these schedules. It doesn't affect his theory unless he wants results not shown here. 3045

Q. What do you suppose the Referee would want except the total result of a given day if he adopted the theory I have set forth?

A. Total result of what?

Q. The amount of collateral at the end of a week plus the amount of advances made up to that time and that were still unpaid?

A. He might want very many other things Speaking of the theory and what he wants, I cannot tell what he will want.

3046 Q. There doesn't appear anywhere in this schedule any arrangement week by week that is based upon the theory that Dockendorff continued to make advances against all the collateral which theretofore had been received by him up to the time of each definite advance?

A. No, sir, it was not prepared upon that theory or with that theory in mind. The figures are shown and can be used for that theory as well as not.

Q. By doing another accountancy piece of work?

3047 Mr. Wolf: I object, the witness has not so testified, he said by making an addition or two.

Overruled.

A. No, sir, the whole thing is stated very plainly in the balance of the schedule. It does not contain the balance of money on the same day, the two are different things and if they want to know both of them in connection on with the other it would be necessary to either turn the pages so that they appear next to each other or else prepare an additional schedule.

3048 Q. In other words, you mean to say that there are sufficient figures in this schedule which you have prepared so that it does not make any difference what theory the Court adopts, if it will go and add the figures on another schedule according to its theory it will have the result, is that correct?

A. That practically is correct.

Q. And, therefore, you say that this report is prepared in such a way that it doesn't make any difference what legal theory is adopted the report has its value, is that correct?

A. That is practically correct. 3049

Mr. Wolf: The Trustee has produced all the books and papers called for by Mr. Cohen at pages 1145 and 1146 of the record and I now ask Mr. Cohen what he wants to do with them?

Mr. Cohen: I cannot now use them today and I cannot state just now what I shall do with them.

Sworn to before me this 19th day of April, 1911.

3050

Adjourned to Friday, April 21st, 1911, at 10:30 A. M.

3051

3052 UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

3053 Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, as Special Master, at No. 165 Broadway, New York City, on Friday, April 21st, 1911 at 10:30 A. M.

PRESENT:

TOWNSEND, Attorneys for Petitioner JULIUS HENRY COHEN and GIRARD B. RALPH WOLF and GARRARD GLEN Attorneys for Receivers and Truster.

PHILIP S. SUFFERN, recalled.

By Mr. Cohen:

3054 Q. Mr. Suffern, do you want us to understand from your testimony at the last hearing that the overdue accounts are to be treated as N. G. accounts?

Mr. Wolf: What do you mean by that?
Mr. Cohen: Accounts of no value.

A. I don't want you to understand it from my testimony. I didn't intend to put it in that way.

Q. It is a fact that you found in your investigation that a very substantial part of the overdue accounts held by Mr. Dockendorff on the first of August, were subsequently collected, is it not?

A. I never made any analysis of his list of August 1st, to determine the value of those accounts which had previously been charged to the Schwab-Kepner Company. I know that a considerable portion of the entire list of August 1st, were subsequently paid but a good many of those were at that time not due. 3055

Q. You did make an analysis of the overdues appearing in the collateral received after August 1st, did you not?

A. I don't quite understand your question, Mr. Cohen.

Master: Overdues and charge backs are one and the same thing, are they? 3056

Mr. Cohen: Yes, sir.

Witness: No, they are not.

Q. Haven't you treated the charge backs and overdues precisely the same in your report?

A. No, sir, I have listed and shown separately such amounts as were charged back, although amounts may have been overdue on that date which may not have been charged back.

Q. What was treated for the purpose of transacting business as overdue in the relations between the parties were those accounts that you have treated as charge backs, is that not the fact? 3057

A. I have treated all charge backs as overdue but just what was considered between the two parties I don't know.

Q. No, but the accounts that were charged back are accounts that were overdue and charged back because of that fact?

A. Yes, sir.

Q. So that charge back accounts are synonymous with overdues in that sense?

A. In that sense, yes.

3058 Q. There may have been accounts overdue that were not charged back but you don't know what they were, isn't that the fact?

A. That is right.

Q. Now, you did, did you not, make an analysis of the collateral received by Dockendorff from the Schwab-Kepner Company after the first of August, by which analysis you discovered that some of those overdue accounts charged back were subsequently paid?

A. The realization that they were subsequently paid was not by an examination of the collateral turned over to Dockendorff but by an examination
3059 of the remittance sheets and other records.

Q. From any records that you had you found that actual cash came for accounts that were charged back at one time or another?

A. Yes, sir.

Q. And you found that it was a very substantial percentage, did you not?

A. I found that it was a considerable portion.

Q. What portion?

A. I haven't figured it out in percentage.

Q. Give us the approximate amount.

A. Say, perhaps for part of that period, I
3060 should think that the payments of charge backs during the last four months was about 18 per cent.—no, that is wrong.

Q. What is the correct figure?

A. About 9 per cent.

Q. What figures did you take into account in making that calculation?

A. From August 1st to November 29th, there was charged back $135,758.43, and there was paid of those amounts charged back about $17,000.

Q. Where do you get that $17,000?

A. You will get it if you will take the analysis

of this schedule, the total of the amount shown in 3061
the 13th column of the large schedule of analysis of collateral account.

Q. You think that is a fair statement, do you, Mr. Suffern?

Mr. Wolf: Objected to upon the ground that the question may mean are the figures a fair answer or is the answer itself fair.

Objection overruled.

A. You asked me, as I understand it, if I could give you approximately the percentage and I endeavored to the best of my ability to give it to you. 3062

Q. And you think that is a fair way to give it?

A. Entirely so.

Q. Isn't it a fact that in that $135,000 worth of accounts you included accounts that were in August 1st as well as subsequently charged back?

A. Yes, sir, it is.

Q. Now, do you think your answer is a fair statement?

A. No, sir; I do not.

Q. Well, correct your answer then.

A. Roughly, I should think that the percentage of the accounts charged back originating after August 1st that were paid after August 1st, was 3063
about 38 per cent.

Q. Now, you have jumped from 9 per cent. to 38 per cent.

A. No, I have changed.

Q. Now, on page 8 under the Column D you have the amount of $135,758.43 as the amount charged back to the Schwab-Kepner Company, and in the next column you have $74,631.41, now why isn't the proportion of remittances from charge backs the proportion which that $74,000 bears to the $135,000?

3064 A. Because the figures represented in Column D of $135,758.43, represents the amount charged back subsequent to August 1st, whereas, $74,631.41, as shown in the next column represents the payments of accounts charged back and includes the various amounts which had been charged back previous to August 1st and were in the August 1st list of accounts receivable.

Q. But you have not given here any statement of the collections made by the Receiver after the 28th of November, on accounts that were charged back prior to that date, have you?

A. No, sir.

3065 Q. And without that statement you couldn't make any accurate statement as to the collections of charge back accounts, could you?

A. No, sir, I endeavored to give you an approximate figure.

Q. And you thought to give an approximate estimate it was proper to leave out of account all of the charge backs collected after the receivership and give no credit for collections on charge backs that were charged back prior to the first of August?

A. In your statement of the question I am asked to consider things that referred prior to

3066 the time in which I made the computation.

Q. Now, why don't the one thing, the collections after the receivership counterbalance the collections on accounts that you charge Dockendorff with on the first of August which were subsequently collected?

A. There is no way of knowing whether they counterbalance without an examination of the Trustee's records. It may be that a larger proportion of the accounts were charged back at August 1st, than at November 29th.

Q. So that you wouldn't say that $74,000 to

$135,000 represented a fair percentage of the amount of collections on charge back accounts? 3067

A. Without knowing the amount of the collections subsequent to the date of the receivership, I think it is impossible to state whether the relation of $74,631.41 to $135,758.43 was a true relation as to the average amount of collections on charge back accounts.

Q. Now, bearing in mind that your figure of 38 per cent. leaves out of account the collections made by the Receiver and Trustee on charge back accounts and in the light of the investigation that you have made, what would you be willing to say, as an expert accountant would be the percentage of collection on charge back accounts? 3068

Mr. Wolf: Between what periods?

Mr. Cohen: As an average for any period, based upon the data which you have.

A. I should think that from the figures before me it would be safe to believe that from 50 per cent. to 55 per cent. of the charge back accounts could be collected.

Q. Now, when you testified at the last hearing at page 1182 that Dockendorff replaced bad security with good security, what did you mean by bad security, these charge back accounts, did you not? 3069

A. I don't know just what the record on that page shows my testimony to be, but I remember having stated in answer to one of your questions that he received good security for all of the charge backs which he made and in addition for such deductions and cancellation of accounts as were shown by the memoranda on the remittance sheets of accounts cancelled and merchandise returned, or something to that effect.

Q. Then you didn't mean when you said bad accounts the charge back accounts, amounting to $135,000?

3070 A. Yes, sir; I did include them in my general statement as to how I thought he bettered his position.

Q. That is all we were examining you about at that time, don't you recall?

A. No, sir, I thought you were also referring to other accounts by which he bettered his position such as cancellation of merchandise, etc.

Q. At all events, in your opinion as an expert accountant, actual experience demonstrates that the charge back accounts were worth from 50 per cent. to 55 per cent. of their par value?

A. No, sir; I didn't mean that they were worth
3071 that, I meant that they had been collected at that, it may be that due to special circumstances one person can collect a larger portion of an account that another person could in case it goes into the hands of a receiver. I meant to state that I thought it was a fair average of what might be expected to be collected, not that they were necessarily worth that much in liquidation.

By the Master:

Q. I understood your testimony was that it was the average of what was collected?

A. Yes, sir.

3072 Q. And you based it upon the figures of the amount collected?

A. I based it upon that, but I understood the question to be what was my opinion. It would bring practically the same result.

By Mr. Cohen:

Q. Now, then, do you know any other way of getting the value of any security of any kind except by actual experience, as an accountant?

Mr. Wolf: Objected to on the ground that the witness is not here to testify to

the value of accounts, he is here as an ex- 3073
pert accountant.

Objection overruled.

A. Some values are established without experience, I presume you mean by security, assigned security?

Q. Yes.

A. No, sir.

Q. Now, at page 1182 you were asked this question and gave this answer:

"Q. And you think because Dockendorff had charge back accounts amounting to $135,000 and after that date got other ac- 3074
counts receivable that was bettering his condition, do you?

"A. Since he replaced bad with good, yes, sir."

Q. Now, what did you mean by good when you answered that question in that way?

A. I meant new accounts which apparently contained every element of collectibility.

Q. And in that you included accounts where the merchandise had not been shipped from the bleacheries?

Mr. Wolf: Objected to as assuming some- 3075
thing, the witness has stated that everything that appeared by the exhibits in evidence he deducted from his reports. The question contains an improper assumption.

Objection overruled.

Question read.

A. Referring to good accounts, I neither included nor excluded on account of shipment, merely meaning the collateral which was assigned to him that day inclusive of XC.

Q. Taking the collateral at its face value as-

3076 signed to him after the first of August, regardless of any circumstances that might change the face value of that collateral, is that what you did?

A. Regardless of any circumstances at the time, subsequently, I did not take it regardless of circumstances because a reduction of that actual figure is in my other answer as to credit allowances.

Q. I know, but I am confining you now to asking you precisely what you meant when you testified at page 1182 that because Dockendorff had charge back accounts amounting to $135,000 and after that date got other accounts receivable that that was bettering his condition as to security be-
3077 cause he replaced bad with good. Now, you tell me that the good accounts you had in mind were the accounts subsequently received and I am asking you whether it isn't the fact that you included in the good accounts that you then testified to and are testifying to now accounts, some of which may not have been good because of the fact that the goods were not shipped from the bleacheries?

Mr. Wolf: Do you want him to admit the truth of your preamble?

Q. Do you understand what I am directing your attention to, Mr. Suffern?

3078 Mr. Wolf: I object to Mr. Cohen's speech going on the record; if he wants to direct the witness's attention to testimony previously given he may do so by reading the testimony.

Objection overruled.

A. In answer to your last question, I think I do understand what you wish.

Q. Now, please tell me then whether when you used the words good accounts in answer to the question at page 1182 which I quoted to you you meant to include accounts some of which were accounts

goods for which had not been shipped from the 3079
bleacheries? You can answer that yes or no.

A. Yes.

Q. Now, you were making a comparison then when you gave your answer at page 1182 between accounts which you say as an expert produced cash in the ratio of from 50 per cent. to 55 per cent. of par with accounts some of which were not shipped represented by merchandise actually shipped from the bleacheries?

A. Yes, sir.

Q. And you thought, in your opinion as an expert, that Dockendorff was bettering his condition by lending in accordance with the agreement 80 3080
cents on every 100 cents of accounts receivable, when the goods had not been shipped from the bleacheries and continuing to hold the accounts receivable which had been charged back?

A. Yes, sir.

Q. Now, what is the total amount as shown by your report of the amount of the accounts receivable received by Dockendorff after the first of August, 1910, that were shipped from the bleachery after the assignment of the accounts?

A. I have the amount shipped on this that were paid or remained open at the end of the period.

Q. Yes, but can't you give me the total amount 3081
of accounts of that character received after August 1st by Dockendorff?

A. No, sir; it isn't shown nor was it prepared.

Q. Haven't you prepared a schedule showing all of those accounts?

A. You mean all that were shipped or all that were assigned?

Q. All that were assigned after August 1st where it appears from papers or books that they were shipped after the assignment of the account?

A. It may be that some were shipped and after-

3082 wards returned to Dockendorff and in that case they would not have been included. I have an amount that represents all shipments after date of assignment of such as were paid or remained open.

Q. But outside of those paid and remaining open how many were there?

A. No such schedule was prepared.

Q. You haven't got it anywhere?

A. No, sir.

Q. So you can't tell to-day what the extent of the risk was that Dockendorff took in advancing money against accounts receivable where the goods

3083 were shipped from the bleacheries after the date of the assignment?

A. Not to a cent, no, sir.

Q. Can you tell approximately?

A. I should think that the sum of those that were shipped and everything that was paid and open would very largely represent the total of any amounts shipped subsequent to the date of assignment.

Q. Do you include in that the $120,000 of orders to the bleacheries that were cancelled just before the failure?

A. No, sir.

3084 Q. Don't you think it would be fair in considering the improvement of a man's condition, in giving your answer, to consider the risk that he was taking that the accounts receivable might not become valid by reason of the non-shipment of the goods?

A. It certainly would affect it, Mr. Cohen.

Q. And notwithstading that that would affect your opinion, are you still of the opinion that because Dockendorff had charge back accounts amounting to $135,000 and after that date got accounts receivable, some of which never came into existence by reason of the fact that the goods

were not shipped, that he was bettering his condition by replacing good for bad? You can answer that yes or no, it merely asks if you are still of that opinion. 3085

A. It takes also an assumption of those changes.

Q. What assumption in the question do you quarrel with, Mr. Suffern?

A. He may have bettered his position up to, for instance, say two weeks before since that period has been used before, and still at the very end have lost the betterment due to non-shipment of goods.

Q. So you would divide your answer according to periods, at one period he would be bettering his condition and at another he would not? 3086

A. No, sir, I was merely stating what could be the case, not stating what was.

Q. As a matter of fact all that you were considering was such deductions as could be made from the exhibits that Dockendorff produced here, regardless of the actual condition of his security, isn't that so?

A. Practically, that is so.

Q. You didn't care, for the purpose of preparing your report and giving testimony here what the actual conditions were as long as you collated the figures in a way that would represent the conditions of the memoranda from the exhibits which Dockendorff had offered? 3087

A. No, sir, that isn't right. I was interested in the result as well as in the figures.

Q. In what way?

A. That the result should as truly as possible show everything that was reflected by the records examined.

Q. But you didn't expect to get a result that would show the actual condition of affairs, did you?

A. No, sir, not as to the actual condition and value of his security.

Q. If you had wanted to testify as to the actual

3088 condition of his securitiy at the comparative dates you wouldn't have made this report at the time that you did, would you?

A. It was not my intention to prepare the statement showing the actual value of the security rather than the book value of the same.

Q. That doesn't quite answer my question, Mr. Suffern.

Question read.

A. There is certainly nothing about the date that would interfere with it except as to the date of commencement—

3089 Q. You have given explanations but you haven't answered the question. Can't you answer yes or no?

A. The date of February 29th would not have affected the figures.

Mr. Cohen: I move to strike out the answer as not responsive.

Motion denied.

Q. If you had conceived that it was your duty to testify as to the actual condition of the security so as to make a comparison between the conditions as of various dates, would you have been willing to

3090 testify here without making additional examination into the facts?

Mr. Wolf: Objected to, not proper cross examination, immaterial, irrelevant and incompetent.

Overruled.

A. If I had considered it my duty to prepare the information beyond the extent to which I was employed and therefore determined that I should have given the information that you refer to it would not have been possible to submit or prepare it at this date.

Mr. Cohen: I move to strike out the answer 3091
as not responsive.

Motion allowed.

Question read.

A. For the purpose of testifying as to the relative value of security held at different dates I would not, if I had conceived it to be my duty, have felt that I could testify without further information.

Q. And you did go to Mr. Williams for some information to support the data that you did report but made no effort to complete your inquiries to get at actual conditions.

Mr. Wolf: I object, I think we have 3092
had that testimony now from about every angle known to the adroit art of cross examination.

Objection sustained.

Q. Now, at page 1180 you testified, Mr. Suffern, in answer to various questions as to why you didn't answer the questions put to you in Mr. Wolf's letter referring to the lettering of Deckendorff's condition: "According to my best recollection I stated to Mr. Wolf what could be done from the exhibits in evidence with the assistance of such other books as I have testified to, that there could be presented 3093
a report showing the collateral he received, summarized week by week, the various cancellations of that by payments and returned merchandise and any other entries affecting and show the collateral from Deckendorff's point of view week by week in his possession, eliminating after August 1st, the charge backs." What did you mean by the use of the words "from Deckendorff's point of view?"

A. I meant the accounts that were assigned to him which were apparently good accounts which he accepted and loaned against, I said it was from his point of view a good account receivable, regardless

3094 of anything which would influence it. It may be that the particular items in my mind was the charge backs in the last period which I have been questioned about and which I had no knowledge concerning at the time, but I considered it as collateral from his standpoint regardless of any happening at the Schwab-Kepner Company which would affect the quality of the collateral.

Q. How could you testify as to Dockendorff's point of view without knowing all of the circumstances that he took into account in making the advances?

A. I presume I had in mind an expression like
3095 from Dockendorff's side of the fence, not necessarily what he had in mind. Counsel had asked for all of his records and I assumed that everything in any way affecting the same had been submitted to us.

Q. Did it ever occur to you while you were making up your report that Dockendorff might have regarded the assigned accounts, assigned in advance of the shipment from the bleacheries as not high class security but that he was adequately secured by the X' and overdue accounts that he held for purposes sufficient to make the advances in anticipation of the shipment from the bleacheries?

3096 A. I never went through that exact process mentally, Mr. Cohen, to determine just those things.

Q. Did any part of that ever occur to you when you were making your investigation?

A. Yes, sir.

Q. Did you ever read Mr. Kepner's testimony in this proceeding as part of the testimony which you read in which Kepner testified concerning the precariousness of the security that the Schwab-Kepner Company was giving to Dockendorff?

Mr. Wolf: Objected to as having been gone over and also on the ground that there is no such testimony by Mr. Kepner.

Mr. Cohen: I will amend the question to "Did you ever read Mr. Williams' testimony in this proceeding as part of the testimony which you read in which Mr. Williams testified concerning the precariousness of the security the Schwab-Kepner Company was giving to Dockendorff?" 3097

A. I read part of Mr. Williams' testimony, whether it was all or not I don't know. I do not recall those words but it seems to me that here was something of that kind in the tesitmony which I read.

Q. Don't you recall the substance of that?

A. The substance of the testimony? 3098

Q. Don't you recall that the substance of Williams' testimony that referred to this indication that regarded this security as precarious?

A. No, sir, I recall the substance of part of William's testimony that referred to this indication that the security he received was precarious.

Q. Do you recall that there was something in Williams' testimony that recalled your attention to the fact that some portion of the security that Dockendorff got was precarious, you do recall that don't you?

A. In substance, yes, sir.

Q. Don't you know that that all referred to the accounts receivable that might at any time be cancelled by reason of the failure to ship from the bleacheries? 3099

A. I didn't interpret it to mean exclusively that. I knew it referred to the accounts receivable assigned to him but whether it was with reference to the precariousness as due to non-shipment of merchandise or to the character of the creditor, I don't know.

Q. You didn't read that testimony carefully enough to remember that?

3100 Mr. Glen: I object to that. I think the witness cannot testify to his interpretation of Williams' testimony.

Objection sustained.

Q. Did you read in any part of Williams testimony at any time that he regarded the accounts assigned to Dockendorff covering goods not shipped from the bleacheries as being precarious security?

Mr. Glen: I think the testimony of Mr. Williams should be shown to the witness.

Mr. Cohen: At the last hearing the witness was examined concerning his reasons for not
3101 answering the question put to him by counsel in the letter asking whether or not Dockendorff's security was placed in better shape and he gave at 1180 and 1181 of the record the reasons why at the time he was giving the testimony he thought that Dockendorff's security was bettered. He gave all of the reasons at that time. Upon analysis at page 1182 it appears that his reason was because he thought that since Dockendorff had charge back accounts after August 1st, amounting to $135,000 and after that date got other accounts receivable it bettered
3102 Dockendorff's condition by replacing bad with good accounts. He has testified here to-day that in referring to good accounts he included the accounts as they appeared on their face regardless of whether or not the accounts covered merchandise shipped from the bleacheries. I am now asking him since he has testified that he read a portion of Williams' testimony-whether or not he found in any portion of that testimony, testimony to the effect that Williams regarded those accounts, namely the accounts for merchandise not shipped from the bleacheries, as being

precarious, whether he had read that testi- 3103
mony, because if he did read it and still testified that he regarded those accounts as good accounts it is difficult to comprehend how as an expert accountant he could give such an opinion. On the other hand if he had not read it and did not know of that fact then we get the precise understanding of the value of the opinion of this witness as an expert that Dockendorff bettered his position, because at page 1182 in answering the question he said that he knew of no other bettering of Dockendorff's collateral situation than that to which he was testifying at that 3104
time.

Objection overruled.

A. I don't recall Mr. Williams' testimony part by part. I recall as a whole that there was some such general statement made in one or more parts of his testimony and that he said on calling Dockendoff's attention to it he, Dockendorff, failed to agree with him or something of that kind. That is my recollection.

Q. That is your best recollection of what you read in Mr. Williams' testimony?

A. No, sir, I thought you were referring to this 3105
particular matter.

Q. That is your best recollection of that part of the testimony which you read?

A. It is the impression which remains as to the various testimony. It may be a combination of one or two parts. I don't remember it in words or anything of that kind.

Q. It made no other impression upon your mind as to the precariousness of the collateral, the assigned accounts receivable the goods for which had not yet been shipped from the bleacheries?

A. I really don't know what you mean by wheth-

3106 er it made any other impression—whether it started any line of reasoning in my mind?

Q. Was your attention ever called to any testimony regarding bleachery overdrafts?

Mr. Glen: Do you mean testimony of Williams?

Mr. Cohen: I don't care whose testimony, Williams' or anybody else.

Mr. Wolf: I object to asking if it was ever called to his attention, he might be asked if he read it.

Objection overruled.

3107 A. It is my recollection that it was.

Q. And isn't your recollection also that Mr. Wolf at some time or other called your attention to the fact that it was testified to by some of the witnesses tha Dockendorff had knowledge of the bleachery overdrafts?

A. Why, I have some knowledge as to the facts that you are inquiring about, but whether it was testimony which I read or was called to my attention I am not sure.

Q. Now, assuming Mr. Suffern, that under his contract with the Schwab-Kepner Company Mr. Dockendorff was entitled to continue to hold the
3108 charge back accounts as collateral for past advances and did as a matter of fact advance up to 80% of assigned accounts thereafter received by him, including accounts where the goods were not shipped by the bleacheries, would you still say as an expert accountant that in your opinion Mr. Dockendorff's condition was bettered?

A. Do you mean actually bettered?

Q. Yes.

A. Regardless of any transactions that took place which weren't reflected by charges taken by him or credited to him by the Schwab-Kepner Company?

Q. I am simply confining you to your own re- 3109
port with this additional assumption which I have made.

Question read.

A. Certainly, not very substantially.

Q. Why can't you say that it would or would not be answer to that question?

A. Because it is difficult now, having the knowledge of that $120,000 which has been called to my attention in Court to dismiss it from my mind in coming to a calm decision as to whether or not his condition was bettered?

Q. You think that $120,000 was an important 3110
consideration in determining whether or not his condition was bettered, don't you?

A. That is one important consideration, yes, sir.

Q. I said an important consideration?

A. Yes, sir.

Q. And do you think that the Ferguson-McKinney and D. O. Tatum accounts are another important consideration?

A. I have no knowledge as to whether they are or not. Very indirectly since this report was delivered I learned of particular accounts of that kind.

Q. Well, assuming that there were other ac- 3111
counts cancelled of which you have no definite knowledge besides the $120,000 amounting to $25,000, would you say that the fact that $145,000 worth of Dockendorff's security was not valid had or had not an important bearing upon the question of whether or not his condition was bettered between the first of August and the receivership.

A. It certainly has an important bearing.

Q. And yet you as an expert accountant when the question was put to you by counsel in the letter that opened up your work for you as to whether or

3112 not Dockendorff's security was placed in better shape or not never took the steps to ascertain what the amount of that important consideration was and its bearing upon the answer to that question, did you?

A. I had no knowledge of those questions and they were not taken into consideration.

Recess Taken.

After Recess.

3113 Mr. Wolf: Mr. Cohen, in answer to your notice to produce which appears at pages 1145 and 1146 of the record we have here again the books and papers of the Schwab-Kepner Company which you called for and if you desire to make any use of them before completing Mr. Suffern's cross examination I want to notify you that they are here.

Mr. Cohen: Our cross examination of Mr. Suffern has relieved us of the necessity of offering any of the books in evidence, Mr. Wolf. We have completed our cross examination of him.

3114 PHILIP S. SUFFERN, examination continued.

Redirect examination by Mr. Wolf:

Q. In examining the records which are the foundation of your report did you exclude any figures shown by the records that you examined?

Master: Exclude from consideration?

Mr. Wolf: Exclude from the report?

A. Why, yes, sir, I excluded from the report, but I didn't exclude from consideration.

Q. What figures did you exclude and why? 3115

A. In the sales books there were entries for certain of the bills that were sent to Dockendorff and—

Q. I think I can shorten that by asking you from the exhibits which are in evidence, the exhibits produced by Dockendorff, you examined those and I ask you whether in your report you physically excluded any of the figures shown on those exhibits?

A. Everything excepting lead pencil notations subsequent to August 1st is included.

Q. And by the exhibits in evidence I mean all of the data produced by Dockendorff which was 3116 offered in evidence in your presence?

A. Yes, sir.

Q. By the exhibits you refer to all of the exhibits you referred to in your direct testimony?

A. Yes, sir.

Q. What original exhibits did you examine as the basis of your report which are in evidence?

Question withdrawn.

Q. Now, what information appears in your report Mr. Suffern, as having been obtained from the documents that you examined which are not in evidence? 3117

Mr. Cohen: Objected to on the ground that it has already been covered.

Objection overruled.

A. The information given in those parts of the report which refer to the shipments in any particular was obtained from the documents not in evidence.

Q. What do you give in your report other than the dates of shipment regarding the shipments?

A. On pages ten to fifteen inclusive there is a

3118 memorandum, shipped by American Shirt Company and shipped by L. N. Levinson, no date is given for the shipment but the information as to the character of that shipment was obtained from books not in evidence.

Q. What do you mean by the character?

A. That is, shipped by American Shirt Company, was indicated either on the sales book or shipping orders.

Q. In other words, you mean the name of the shipper?

A. Yes.

Q. Go through the report and pick out every-
3119 thing that you find in the report representing shipments that you obtained from documents not in evidence?

A. On pages 16 to 22 the dates of shipments were obtained from records not in evidence; on pages 23 to 60 the dates were obtained from documents not in evidence and on page 23 the memorandum shipped to warehouse on 7 13 and from warehouse on 8 3—

Mr. Cohen: I call your Honor's attention to pages 1020 and 1021 and the following pages containing the examination by Mr. Wolf and show you that these matters
3120 have been fully covered by him and I object to the question upon the ground that it has been covered unless counsel states the purpose of the repetition.

Master: It appearing from the record that this matter has already been covered the objection is sustained.

Mr. Wolf: I ask leave to continue this line and your Honor will see that it is leading up to other questions.

Mr. Cohen: Objected to upon the ground

that the witness has already testified to these things at considerable length on direct examination. He testified to the sources from which he derived his information for his report and the only means by which he can change his testimony in response to questions asked by counsel is by corrections and his attention should be called to specific portions which it is desired to correct. 3121

Objection sustained.

Q. Mr. Suffern, as I understand your testimony you did not exclude any of the figures shown on the exhibits in evidence produced by Dockendorff upon which the report is based in the preparation of the report, is that correct; except of course the pencil notations which you referred to a few moments ago? 3122

A. I did not verify nor exclude in this report any of the figures in Dockendorff's statements relating to transactions which happened previous to August 1st, 1910 with the exception of his list of August 1st.

Q. In other words you assumed that the August 1st situation was as shown by the papers produced by Dockendorff and assumed then to be true? 3123

A. Yes, sir.

Q. Now, starting from that assumed point did you exclude in the compilation of figures that you have produced here in your report any figures as shown by those documents upon which your report is based except the pencil notations about which you have previously testified?

A. No, sir. The only pencil notations that I recall were, I think, on the remittance sheets; a division of the amount indicating, as I understood it, the banks in which the amounts were deposited.

3124 Q. Now, the only figures that you included or the only data that you included is the data shown by the papers not in evidence about which you have previously testified?

Mr. Cohen: Objected to on the ground that it is leading and involves the conclusion of the witness and is not proper redirect examination.

Question withdrawn.

Q. What data is contained in this report not shown by the exhibits in evidence?

3125 Mr. Cohen: Objected to upon the ground that it has all been covered at page 1020 and the following pages.

Q. Then, do I understand, Mr. Suffern, that the only data in the report not obtained from the exhibits in evidence is the data about which you have testified previously?

A. Yes, sir.

Q. You have testified Mr. Suffern, that you read the testimony of Mr. Dockendorff or certain portions of that testimony?

A. Yes, sir.

Q. And also certain portions of the testimony
3126 of Mr. Williams, I believe?

A. I am not sure whether I read all of the testimony of Williams or only a part.

Q. Why did you read that testimony?

Mr. Cohen: Objected to, not proper redirect examination.

Overruled.

A. To get an understanding of the case prior to the beginning of the work.

Q. Mr. Suffern, you were asked as page 991 of the record this question and gave this answer.

"Q. So, taking the two schedules together, 3127
Mr. Dockendorff is charged on the collateral account with the return of the charge backs and charged again with the remittances for those accounts as they come in.

A. The two are separate charges—have no relation to each other."

Will you explain that, Mr. Suffern?

A. Two schedules were prepared that were under discussion, one the account current for the period and the other the callateral account. In the account current the charge backs by him are treated as a reduction of the collateral and that merely af- 3128
fected the collateral. When collections were received of accounts which were charged back they were in turn sent to Dockendorff and then they were charged against his account current the same as any other money which was sent to him.

Q. Were there any duplications of the charges against Dockendorff?

Mr. Cohen: Objected to, leading and involves the conclusion of the witness.

Overruled.

Mr. Cohen: Duplications by whom, by Dockendorff?

Mr. Wolf: No, by the witness. 3129

A. No, sir, they were both proper according to the way they were treated.

Q. Now, you testified at pages 991 and 992 of the record as follows:

"Q. Did you in preparing these schedules on page 8 in the last column, deduct any amount for accounts receivable held by Mr. Dockendorff which were cancelled by reason of the failure of the bleacheries to ship the goods?

3130 A. It may so have happened.

Q. Don't you know?

A. It did happen.

Q. Then are we to understand that this last figure 445762.78 on page 8, includes all accounts subsequently cancelled by the failure of the bleachery to ship the goods?

A. Do you wish yes or no to that?

Q. I would like to have it if you can answer yes or no. Answer it yes or no and I will ask you for a further explanation.

A. I don't know."

Will you explain that answer, please?

3131 A. I had no knowledge of the cancellation of goods in that period when this was prepared, if any goods were not shipped in those last two weeks credit for which had not been sent to Dockendorff the amount of those goods not shipped is contained in that total.

Q. Mr. Suffern, you testified at page 993 in answer to Mr. Cohen's question as follows:

"Q. Have you deducted then, all accounts receivable which by reason of anything that happened at the mills, were not collectable by Mr. Dockendorff?

3132 A. As revealed by the books I examined, yes."

Now, in order that we should understand that testimony will you explain from what you made that deduction, what figures in your report?

A. The various cancellations of accounts receivable in part or in full that were shown on remittance sheets which were sent to Dockendorff cancelling the accounts. Sometimes they were called merchandise credits or merchandise returned and everything that was indicated on those sheets was

excluded from the collateral shown in this last column. 3133

Q. And would be excluded from the balance security account on page 8?

A. Yes, sir.

Q. You said you deducted everything that was revealed by the records that you examined?

A. If I said that I meant everything shown by the papers and records that I examined that should be deducted.

Q. Now, in what way would that be shown by the papers that you did examine? Give us an illustrative case.

A. On page 2 of the analysis of collateral accounts opposite invoice 1209, J. Elerman, the amount of invoice is shown as $199.59, the remittance sheet of August 10, gave Dockendorff credit for the amount of that invoice; that was followed throughout and the sum of all those credits is given in column C of page 8. 3134

Q. From what papers were the credits taken, from the remittance sheets?

A. Yes, sir.

Q. From any other papers?

A. The credits in column C were from the remittance sheets, those in D were from the charge backs. 3135

Q. And those were all the papers produced by Dockendorff?

A. Yes, sir.

Q. Mr. Suffern, turning to page 8 of your report, the first item in balance security account $341.-123.91; does that include or exclude the charge backs which existed at that date?

Mr. Cohen: Objected to upon the ground that it has already been answered.

Objection sustained.

3136 Q. Mr. Suffern, I understand from your previous answers that the item on page 8 balance security account $341,123.91 includes the charge backs that existed on that date and if that is incorrect I wish you would point it out, following that up, will you please tell me whether or not in the other items of the balance security account appearing on page 8 subsequent to the $341,123.91 you excluded the charge backs which existed on the first of August, 1910?

Mr. Cohen: Objected to, already answered.

Question withdrawn.

3137 Q. Mr. Suffern, you testified on page 1012 as follows; with reference to the first item of $341,123.91 in the last column of page 8 of your report:

"Q. But you do know that the item succeeding that—you know as a fact that the items following that in that column do not include the charge backs?

A. That is right.

Q. Subsequent to August first.

A. Excepting any amount which you add in that August first balance."

3138 What did you mean by that testimony?

A. That the same amount of charge backs as were contained in the opening item in the last column, of $341,123.91 were carried in all of the other balances throughout that column.

Q. And you only segregated the charge backs which came into existence after the first of August, 1910, is that correct?

A. Yes, sir.

Q. You testified, Mr. Suffern, referring to the same subject, on page 1014:

"Q. Now, do you claim that the overdue

accounts and the charge backs are included 3139
in any of the items appearing in the last column of page 8?

A. No, sir."

What did you mean by that answer?

A. I meant that I didn't make a claim that they were included because I had not examined any items previous to August 1st to see whether it had been charged back previous to that point but if it is there it is included throughout but I didn't present it as a positive assurance throughout.

Q. Did you have any papers submitted to you which would enable you to fix the amount of charge backs in the item of $341,123.91 balance security 3140
account on page 8?

A. There were various charge back slips previous to August 1st, whether anything was submitted which would contain all of the charge backs previous to that date, I don't know.

A. And is that also the explanation for your answer on pages 1076 and 1077 of the record?

"Q. On page 8 of your report did you not in the column headed balance security account exclude the accounts that are known as charge back accounts?

A. In part." 3141

Mr. Cohen: Objected to.

Question withdrawn.

Q. On pages 1076 and 1077 of the record you testified as follows:

"Q. On page 8 of your report did you not in the column headed balance security account exclude the accounts that are known as charge back accounts?

A. In part."

What did you mean by that answer?

3142 A. I meant that in all of the balances after the first balance such charge backs as were charged after August 1st were excluded, but I made no analysis of the August 1st list to exclude from the opening total of the charge backs that might have been contained therein.

Q. Mr. Suffern, you testified at page 1085 of the record:

> "Q. And that page is the answer so far as you as an expert can give it to Mr. Wolf's question in the letter which was put in evidence 'Subsequent to August 1st, 1910, was
3143 Dockendorff's security placed in better shape' and 'To what extent?'
>
> A. No, sir."

Referring to Exhibit C of your report, what did you mean by that answer?

> Mr. Cohen: Objected to as not proper redirect examination.
>
> Overruled.

A. I had not endeavored to make a definite answer to that question of Mr. Wolf's and as such this page of the report was not an answer.

Q. On page 1090 the following appears in the
3144 record:

> "Q. Do you understand by an investigation made by an expert accountant that it is to be limited to the data furnished to him by his own client?
>
> A. It has nothing to do with the investigation."

Will you explain that, please?

A. An investigation need not necessarily be an investigation into all the accounts of a certain concern but one can investigate any particular department of a concern or any particular accounts that

one is instructed to and as such I said that it 3145
had nothing to do with an examination because the examination did not go into all the ramifications of the business.

Q. Mr. Suffern, at pages 1115, 1116 and 1117 of the record you testified in answer to questions of Mr. Cohen as follows:

"Q. At the time that you received those letters were you making an investigation into the accounts and transactions between Doekendorff and the Schwab-Kepner Company?

A. No, sir."

Then later on: 3146

"Q. Had you completed your investigation?

A. No, sir."

Will you explain what you meant by that testimony?

A. The first "no, sir" in answer to the question in which I was asked if I was making an investigation was because the first report, the one which is in evidence here had been completed. The second answer was because the investigation was not complete at the time of the question but have been 3147
commenced subsequent to the receipt of the letters, and the third was because they were not completed at that time.

Master: The second question was "Had you completed your investigation," that related to the time when you received those letters as I understand the question.

A. I didn't understand the question that way when I answered it.

Q. If you had understood it that way what would your answer have been?

3148 A. That I had completed the report submitted and was making further investigations.

Q. You were asked at page 1130 of the record by Mr. Cohen:

"Q. Did you find that these overdue accounts appeared in the account current as actual charges against the Schwab-Kepner Company?

A. No, sir."

Can you tell now what bookkeeping disposition was made with regard to the charge backs by Dockendorff?

3149

Mr. Cohen: From the exhibits in evidence?

Mr. Wolf: Either from the exhibits in evidence or the testimony which you have heard Dockendorff give.

Question reframed.

Q. You have heard Mr. Dockendorff testify in his examination under 21A with respect to the charge backs?

Mr. Cohen: Objected to as incompetent, irrelevant and immaterial.

3150 Objection sustained.

Q. Assume, Mr. Suffern, that on a given date Mr. Dockendorff charged back to the Schwab-Kepner Company $5,000 of accounts and that on that date he received from the Schwab-Kepner Company $10,000 of new accounts as against which he would make a loan and assume that he deducts the $5,000 of charge back accounts from the $10,000 of new accounts or new approved accounts, thus leaving a balance of $5,000 of new approved accounts and that he advanced 80 per cent. of the remaining $5,000 of new and ap-

proved accounts what would be the entry which 3151
would be made in the account current between Dockendorff and the Schwab-Kepner Company?

Mr. Cohen: What account current are you referring to?

Mr. Wolf: The account current in evidence.

Mr. Cohen: Objected to upon the ground that the question starts out with certain assumptions and asks for an answer as to facts and not as to opinion.

Q. What would be the proper entry to be made in an account current between Dockendorff and 3152
the Schwab-Kepner Company assuming those facts?

A. Outside of the preliminary steps, the net result of such a transaction would be for Dockendorff to debit Schwab-Kepner Company with $1,000 which is approximately 80 per cent. of the difference between the new and aprroved accounts and the amount which he was charging back. That is, provided that he did make the advance and sent the money.

Q. Mr. Suffern, you testified at page 1185 of the record in answer to Mr. Cohen's question:

"Q. Don't you know that if on the first 3153
of August, 1910, Dockendorff had stopped lending any money to the Schwab-Kepner Company according to your own analysis of his remittance sheets and his collateral sheets that he would have received more than enough to pay the $170,018.80 which was due to him at that time?

A. Yes, sir."

Now, on what figures was that answer based?

Mr. Cohen: Objected to upon the ground

3154 that it appears from the question and from the answer that it was based upon the remittance sheets and collateral sheets and an analysis of the witness.

Objection overruled.

A. According to the account current in evidence there was due Dockendorff on August 1st with one or two adjustments $170,018.80 and the collections of those accounts subsequent to August 1st exceeded that debit charge.

Q. In other words, Mr. Suffern, according to the papers that Dockendorff submitted his debit charge against the Schwab-Kepner on the first of
3155 August, 1910, was $170,018.80 subject to a few adjustments?

A. Yes, sir.

Q. And the adjustments wouldn't vary the amount substantially?

A. The amount as shown, as I recall it, is somewhat less than this and I brought it up to that because he had received these checks.

Q. You figured that the indebtedness of the Schwab-Kepner Company to Dockendorff on August 1st, 1910, was $170,018.80?

A. As prepared from his account current, yes, sir.

3156 Q. And on the first of August, 1910, he held certain security for that indebtedness as appeared by the remittance sheets and collateral sheets, the exhibits which he produced?

A. Yes, sir.

Q. And out of those accounts receivable Mr. Dockendorff collected a sum in excess of the indebtedness which you thus found due to him?

A. Yes, sir.

Q. That is what you meant by your testimony?

A. That is right.

Q. Now, then can you tell the amount which 3157
Mr. Dockendorff collected out of the accounts which he held on the first of August, 1910, as appears by the exhibits that he has produced?

A. There was paid after the first of August according to Exhibit P17 $171,960.74.

Q. Exhibit P17 as I recall it is the list of all of the accounts receivable which Dockendorff held on the first of August, 1910, is that correct?

A. Yes, sir. I found by examination of the remittance sheets that he actually collected from those something in excess of that, the total of this page 9 of our report shows the amount he collected as $178,781.64.

3158

Mr. Cohen: Are you including in that the credit of merchandise?

A. No, sir. This amount is, I have found subsequent to the conclusion of this report, slightly in excess of the actual payments, they are still in excess of the amount he shows but not quite up to the $178,781.64.

Q. Have you examined the figures which Mr. Dockendorff has submitted as representing the amount of collections made by him out of the August 1st collateral?

A. Yes, sir.

3159

Q. And his figure of what he collected was $171,960.74?

A. That is right.

Q. In other words he collected according to his own figures out of the collateral which he held on the first of August, 1910, subsequent to August 1st, 1910, about $1,900 more than the indebtedness due to him at that time?

Mr. Cohen: Objected to upon the ground that it is leading and involves a conclusion of the witness.

Objection sustained.

3160 Q. How much in excess of the indebtedness due to Dockendorff as found by you to have existed on the first of August, 1910, was collected by him from the accounts which he held as security as appears in Exhibit P17?

Mr. Cohen: Objected to upon the ground that it is based upon the assumption that the money realized from these accounts was applied only to the liquidation of the indebtedness existing at that time and excludes the assumption that the account was a running account.

Overruled.

3161 A. The difference between the amount shown to be collected on accounts receivable as of August 1st on Exhibit P17 and the debit charge of that account on August 1st was $1,941.94; that is the collections shown on Exhibit P17 were in excess of the debit by that amount.

Q. You were asked by Mr. Cohen this morning and at other times with reference to the value of the accounts assigned by Schwab-Kepner Company to Dockendorff between August 1st and December 1st, 1910, and you testified that you did not endeavor to place actual value on the
3162 collateral but you took it from Dockendorff's point of view. Will you explain what you meant by that, please?

A. In the preparation of the balance security account as shown by page 8 of the report no effort was made to show the value of that security but only the face of the security. Any fluctuation as to the value of the securities as they differed from the face value of the security was not shown by this balance security account.

Q. You were asked by Mr. Cohen with respect to the cancellation of $120,000 of collateral, when

were you told that that cancellation came into effect? 3163

A. I can't recall the date, Mr. Wolf.

Master: The date when he was told, do you want?

Q. Yes, was it subsequent to the dating of the two reports in evidence or prior to that time?

A. I think it was subsequent to that time. I should like to correct that and say that after further thought I realize that it was after the delivery and dating of this report.

Q. You know as an expert accountant that the change in Dockendorff's security would only become effective when the collateral which Dockendorff held was cancelled? 3164

Mr. Cohen: Objected to as being leading and involving a conclusion.

Question withdrawn.

Q. At what point of time do you understand the cancellation of $120,000 of collateral occurred, how long prior to the receivership?

A. My only knowledge as to that is what has been stated to me in the questions asked, which placed it at about two weeks.

Q. Prior to the receivership?

A. Yes, sir. 3165

Q. And would the balance of security account prior to that time, that is prior to November 14th say, have been affected by the cancellation of that security?

Master: If the cancellation occurred after that date?

Mr. Wolf: Yes, I want to know whether the items prior to that would be affected in any way.

Mr. Cohen: Objected to.

Objection sustained.

3166 Mr. Wolf: Will Mr. Cohen state now as the basis of his objection that he understands that Mr. Suffern has no knowledge concerning the alleged $120,000 cancellation except what was contained in the questions here?

Mr. Cohen: I have made my objection and the Court has sustained it.

Q. You were asked, Mr. Suffern, by Mr. Cohen with respect to questions and answers given by you at page 1182 as follows:

3167 "Q. And you think because Dockendorff had charge back accounts amounting to $135,000 and after that date got other accounts receivable that that was bettering his condition, do you?

A. Since he replaced bad with good, yes, sir."

Will you please explain the answer which you gave to that question?

A. My answer was based upon the theory that as the charge backs were deducted from the new approved collateral which he received he was bettering his position because he secured new collateral unmatured against which he charged
3168 and deducted the charge backs of that day.

Q. Do you consider as an expert accountant that a man is bettering his position when he is secured by new accounts possibly good rather than accounts overdue that are possibly bad?

Mr. Cohen: Objected to, not proper redirect examination.

Objection sustained.

Q. Mr. Suffern, you testified that you computed roughly that the percentage of charge backs col-

lected was 38 per cent, will you please state how 3169
that was computed, or whatever percentage it was? Will you please tell us what the percentage was and how you computed it?

A. The portion of the $135,758.43 which was charged back subsequent to August 1st and which applied to accounts originating after August 1st was $44,607.65; the part of these charge backs which were accounts after August 1st that were paid was $16,718.68, that is 37 per cent, plus of the part of these accounts which were charged back in that period.

By Mr. Cohen:

Q. Where do you get that $44,000 figure from? 3170

A. In column headed D, Mr. Cohen, there is the amount $135,758.43 that represents the charge backs after August 1st. Ninety-one odd thousand of those were accounts in Dockendorff's list of August 1st charged back after that which left $44,607.65 which is the charge backs after August 1st of accounts originating after August 1st.

Q. Where do you get the $91,000 figure?

A. It doesn't appear, you get your other figure and make your deduction which leaves $91,150.78.

Q. Where is the $44,000; you said you got it by deducting the $91,000.

A. The $44,607.65 is the sum of the fifth column 3171
in the big analysis schedule.

By Mr. Wolf:

Q. Will you figure the percentage of the different charge backs collected, the different series of charge backs so that we will have the percentage of each?

A. By dividing the entire collection of charge backs after August 1st amounting to $74,611.11

3172 by the charge backs after August 1st amounting to $135,758.43 we find that the amount collected after that date represents 55 per cent. of the amount charged back.

Sworn to before me this 21st day of April, 1911.

Adjourned to Monday, April 24th, 1911, at 10:30 A. M.

3173

3174

UNITED STATES DISTRICT COURT. 3175

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, Referee, as Special Master, at No. 165 Broadway, New York City, on Monday, April 24th, 1911 at 10.30 A. M. 3176

PRESENT:

JULIUS HENRY COHEN and GIRARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and GARRARD GLEN, Attorneys for Receivers and Trustee.

PHILIP S. SUFFERN, recalled.

By Mr. Wolf: 3177

Q. You were asked by Mr. Cohen with respect to your opinion as to whether Mr. Dockendorff's collateral situation at the end of the period had improved or not, what page of the report shows the collateral situation of Mr. Dockendorff?

Mr. Cohen: Objected to upon the ground that it has already been covered, the witness has testified that no page of the report attempts to show the actual collateral condi-

3178 tion and that page 8, Exhibit C, merely shows computations of certain figures and further upon the ground that it involves a conclusion of the witness.

Objection overruled.

A. Page 8 of the report was prepared for the purpose of showing the collateral held by him at different dates according to the method of computation already testified to.

Mr. Cohen: I now move to strike out the answer as the question was allowed by the
3179 Master as a preliminary question and it now appears that it covers ground previously covered and elicits testimony inconsistent with the witness's previous testimony.

Motion denied.

Q. Mr. Suffern in the course of your examination you have read the contracts in evidence between Dockendorff and the Schwab-Kepner Company, have you not?

Mr. Cohen: Objected to upon the ground that it has already been answered.

3180 Q. Since that time?

Mr. Cohen: Objected to as not proper redirect examination.

Mr. Wolf: The object of this question, Mr. Referee is this—Mr. Cohen asked Mr. Suffern when he was on the witness stand whether or not he had read the contracts between the Schwab-Kepner Company and Mr. Dockendorff and the witness answered that he had not. I want to find out now whether since that time Mr. Suffern has read those

contracts and after having read them what changes if any would be made in his report. 3181

Mr. Cohen: I think it is utterly incompetent.

Objection sustained.

Q. I show you, Mr. Suffern, Exhibit P1, December 13th, 1910, and ask you if you have read that paper?

Mr. Cohen: Objected to as incompetent, irrelevant and immaterial and on the same grounds as before.

Objection sustained.

Q. Mr. Suffern, assuming that the contracts between the Schwab-Kepner Company and John E. Dockendorff were in the words and figures of the paper that I now show you and ask you to read, Exhibit P1, December 13th, 1910, also Exhibit P2 of December 13th, 1910, Exhibit P3 of the same date and Exhibits R5, R6, R7, and R8 of February 1st, 1911; I ask you whether you have read those papers and assuming that the contract between Dockendorff and Schwab-Kepner Company was in the words and figures set forth in those papers whether or not any changes would have been made by you in your reports and if so what changes? 3182 3183

Mr. Cohen: Same objection.

Objection sustained.

Sworn to before me this 24th day of April, 1911.

Adjourned to Wednesday, April 26th, 1911, at 10.00 A. M.

3184 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter
of
THE SCHWAB-KEPNER COMPANY,
Bankrupt.
} In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before
3185 Edwin G. Adams, Referee, as Special Master, at No. 115 Broadway, New York City on Wednesday, April 26th, 1911, at 10.00 A. M.

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and GARRARD GLEN, Attorneys for Receivers and Trustee.

THEODORE M. CRISP, sworn.

Examination by Mr. Wolf:

3186 Q. Mr. Crisp, what is your full name?

A. Theodore M. Crisp.

Q. Were you one of the Receivers appointed by the United States District Court for the District of New Jersey in the matter of The Schwab-Kepner Company, Bankrupt?

A. I was.

Q. When were you appointed?

A. I was appointed on the 29th day of November, 1910.

Q. Is that the date that the petition in bankruptcy was filed?

A. Yes, sir.

Q. When did you take possession of the prop 3187
erty and effects of the Schwab-Kepner Company?

A. The next morning, November 30th.

Q. Did you qualify on the 30th?

A. Yes, sir.

Q. When were you discharged as Receiver?

A. I was discharged on the 11th day of January, 1911, I think.

Q. What assets, property or effects of the Schwab-Kepner Company other than accounts receivable came into your custody, possession or control as Receiver?

A. Well, there were the goods at the various bleacheries, and the proceeds of the sale and vari- 3188
ous small items, cash in bank I think was about $180.

Mr. Cohen: Do you mean the proceeds of the sale when you sold?

A. Yes, sir.

Mr. Cohen: The question is what came into your possession when you became Receiver.

A. We had the stock in trade at the store, the goods at the bleachery, the goods at the warehouses and that is all that I remember offhand.

Q. Did the goods at the bleacheries come into 3189
your physical possession?

A. No, not our physical possession.

Q. Why not?

Mr. Cohen: Objected to, incompetent, irrelevant and immaterial and not binding. Question withdrawn.

Q. Did you demand possession of the goods at the bleacheries?

Mr. Cohen: Objected to upon the ground

3190 that it is incompetent, immaterial and not binding upon Mr. Dockendorff.

Objection sustained.

Q. Why didn't you take physical possession of the goods at the bleacheries?

Mr. Cohen: Objected to upon the same ground.

Objection overruled.

A. We didn't because the goods were at the various bleacheries. As soon as we qualified we mailed to every bleachery and took to the warehouses a certified copy of our order of appointment
3191 containing an injunction against any disposition of the goods by the holders.

Q. You haven't answered my question—I asked you why you didn't take possession of the goods at the bleacheries?

A. Your question is why didn't we take possession?

Q. Why didn't you take physical possession of the goods at the bleacheries?

Mr. Cohen: Do you consent, Mr. Wolf, to the striking out of the previous answer?

Mr. Wolf: Yes.

3192 A. Well, because we couldn't any more than make a demand.

Q. I am not criticising you, I am asking you why you didn't.

A. Because they refused to deliver them to us.

Q. Why?

Mr. Cohen: Objected to upon the ground that it is not binding upon Mr. Dockendorff, incompetent, immaterial and irrelevant.

Objection sustained.

Q. What reason was assigned for refusing to deliver possession of the goods at the bleacheries to you? 3193

Mr. Cohen: Same objection.
Objection sustained.

Q. What was said to you as to why the goods were not delivered to you?

Mr. Cohen: Same objection.
Objection sustained.

Q. Did the bleacheries claim a lien against the goods at the bleacheries and was that assigned as the reason for not delivering them to you?

Mr. Cohen: Objected to upon the same ground. 3194

Objection sustained.

Q. Have you given, Mr. Crisp, all of the reasons why you didn't take physical possession of the goods at the bleacheries?

Mr. Cohen: Same objection.
Objection sustained.

Q. Did you take physical possession of the goods at the warehouses?

A. No.

Q. Why not? 3195

Mr. Cohen: Same objection, and upon the further ground that it calls for an answer from the witness which gives hearsay evidence and is not binding upon Mr. Dockendorff.

Objection overruled.

A. Because they refused to deliver them to us.

Q. The assets of which you did take possession consisted of what other than the accounts receivable I mean physical possession?

A. The store and the contents of the store.

3196 Q. Did you take possession the store, was the real property part of the assets?

A. No, we took possession of the contents of the store, the stock in trade and the furniture there.

Q. Then the only physical assets of which you took possession were the stock in trade at the store and the furniture?

A. That is all.

Q. Was the store of the Schwab-Kepner Company under lease?

A. Yes, sir.

Q. Did you sell the stock in trade and the fixtures of which you took possession as Receiver?

3197 Mr. Cohen: Objected to as incompetent, irrelevant and immaterial and not within any of the issues submitted to the Special Master.

Objection overruled.

The Master: I will permit the Trustee to show the assets that came into the hands of the Receivers, the official appraisal of them and the amount realized upon the sale.

Question read.

A. Yes.

3198 Mr. Cohen: May I assume then that it will be unnecessary for me to make objection based upon the same line of reasoning?

The Master: Your objection will be taken to cover all questions relating to the subject.

Q. At public sale?

A. Yes, sir.

Q. What was the price realized?

Mr. Cohen: Does your Honor's ruling intend to cover the value as determined by the actual sale of the Receiver?

The Master: I said I would allow them to

show the amount realized by the Receiver or Trustee upon sale. 3199

A. 85,200.

Q. Does that represent the gross amount that you realized from all the assets which came into your possession other than the accounts receivable?

A. No, it does not.

Q. What other money did you receive?

A. There was something like 8493 which was made up as follows: We collected on insurance rebates 8434.45 and from miscellaneous sources 859.09, I haven't an itemized list of what that came from.

Q. Those two figures then, 85,200 and 8493 represent all of the moneys that you realized, the gross sum from all of the assets that came into your hands as Receivers, other than accounts receivable? 3200

A. And the goods at the bleacheries, yes.

Q. And was that sale confirmed by the Court?

A. Yes, sir.

Q. Was an appraisal made?

A. Yes, sir.

Q. And filed?

A. Yes, sir.

Q. By three appraisers?

A. By two, I think.

By Mr. Cohen: 3201

Q. Any exceptions ever filed to your report?

A. No, sir.

Q. Any objection ever made to your account as Receiver?

A. No, sir, I think not.

Q. Any criticism of your conduct as Receiver?

A. No, sir.

Q. How much did you realize from accounts receivable?

A. On the 11th of January we received from the

3202 accounts receivable $55,643.15. That was the date of the election of the Trustee. Subsequently other checks came into our hands which we deposited because we hadn't turned over this money at that time, there hadn't been any order served upon us directing us to turn it over and we collected other checks subsequently turned over to the amount of $12,882.11.

Q. All of those funds you hold under the stipulation entered into in this proceeding?

A. We hold.

Q. And then turned them over to the Trustee?

A. Yes, sir.

3203 Q. Have you got a schedule of those accounts?

A. Yes, we have them here somewhere I think. I haven't it here, that is of this amount, the amount we received up to the 11th of January.

Q. When you said on January 11th you meant up to and inclusive of January 11th?

A. Yes, sir.

Q. You haven't the schedule of the amounts?

A. No, I haven't it here. I think very probably Mr. Williams has it. I haven't it here in this report, we didn't put it in here.

Sworn to before me this 26th day of April, 1911.

3204

Mr. Wolf: I now offer in evidence the appraisal on file with the Referee in Bankruptcy.

Mr. Cohen: Objected to.

Overruled.

Received in evidence and considered Exhibit R901, April 26th, 1911.

CHARLES G. BARLOW, sworn. 3205

Direct examination by Mr. Wolf:

Q. Mr. Barlow, prior to the 29th of November, 1910, what was your business?

A. Bookkeeper for the Schwab-Kepner Company.

Q. How long had you been the bookkeeper for the Schwab-Kepner Company?

A. Since April last year.

Q. 1910?

A. Yes.

Q. Were you the sole bookkeeper?

A. Yes, sir. That is, after I had been there for about two months, first I was assistant until the 3206
other bookkeeper went.

Q. Who was the head bookkeeper during the first part of the period?

A. Franklin Conran, the Treasurer, was really the head bookkeeper.

Q. I show you a book marked trial balance and recapitulation book, is that one of the books of the Schwab-Kepner Company?

A. It was. A book I bought to start the trial balance in when I went there.

Q. In whose handwriting are the entries?

A. My handwriting.

Q. What is the date of the first entry? 3207

A. The first entry is January 1st, 1910.

Q. Is that in your handwriting?

A. It is in my handwriting.

Q. I thought you said you came in April, 1910?

A. April 10th, 1910, but there had been no trial balance kept so I got a book and made the balances right from the first of January, 1910, from the balance sheets made out on the first of the year by the previous Treasurer and bookkeeper.

Q. You simply copied it into the book, the trial balance book?

3208 A. And then balanced each month from then on. I made the balances from the books and corrected them and posted them up to date after I got there.

Q. After April, 1910, after your employment began did you make a trial balance every month?

A. Every month.

Q. And were the entries in this trial balance book correctly made.

A. Yes, sir.

Q. Were they made at or about the date that the transactions are dated in the book?

A. They were made right at the end of each month, after the third day of the following month
3209 the balance was all completed and proven. Each month they had a trial balance to look at.

Q. The trial balances were taken every month?

A. Every month, and the books proven before we went on with the next month's work.

Offered in evidence.

Mr. Cohen: May I ask, Mr. Wolf, whether it is your purpose to offer in evidence the books from which the trial balance is made?

Mr. Wolf: We probably will offer some, I don't know that we will offer all.

Mr. Cohen: Then I would like to ask the witness a few questions before the book is
3210 received in evidence.

Cross examination by the offer by Mr. Cohen:

Q. This trial balance book is a book containing trial balances?

A. Of certain things?

Q. Not of everything?

A. No, sir.

Q. What are the certain things?

A. Of the general ledger which proves, the trial balance of everything kept in the purchase ledger

which proves, the other, the customers' ledger has 3211
not been made a trial balance of.

Q. What do you mean by the customers' ledger?

A. The sales ledger, there was a general ledger, a purchase ledger and a sales ledger.

Q. So this is not what an accountant would call a complete trial balance?

A. No.

Q. And the words trial balance have a definite meaning to an accountant, have they not?

A. Yes, sir.

Q. What do they mean?

A. That all the sales ledgers have been proven and balanced up and that the balance according to 3212
the controlling account in the general ledger is proven.

Q. And this is not a trial balance book of that character?

A. It is not a complete trial balance.

Q. You have stated the things that it is not a trial balance of, and of course it isn't possible to prove a trial balance of a business except by making a complete trial balance, is it?

A. That would not prove that the sales ledgers were in actual balance or that they have been posted correctly.

Q. I mean to say that you can't have a trial bal- 3213
ance that you can be sure of being accurate of the conditions of the business as disclosed by the books of the concern unless you make a trial balance of all the accounts.

A. It is possible that that trial balance may be absolute correct.

Q. I understand that, but you can't testify as an accountant that a trial balance is a trial balance of all the transactions unless it contains a trial balance of all of them?

A. I suppose one couldn't call it a complete trial balance.

3214 Mr. Cohen: I object to the book upon the ground that it is shown that it is not a complete trial balance book and is merely a compilation of entries made concerning these books which have been referred to.

Ruling reserved until other books have been offered.

By Mr. Wolf:

Q. Mr. Barlow, I show you the book marked private and purchase ledger No. 1, S. K. Co., what book is that?

A. That is the purchase ledger of the company.

3215 Q. Of the Schwab Kepner Company?

A. It was the private ledger and purchase ledger up to the time I came there and then we transferred the general ledger into another ledger and that was simply the purchase ledger?

Q. So that after you were employed it became simply the purchase ledger?

A. Yes.

Q. After April, 1910, did you make all of the entries in this book?

A. Not until about the first of June, I think, did I commence to make all the entries.

Q. Then after the first of June did you make all

3216 the entries?

A. Yes, I did.

Q. This book was the purchase ledger of the Schwab Kepner Company?

A. Yes, sir.

Q. After you arrived down to the time of the receivership?

A. Yes, sir.

Q. And does it contain anything else covering that period?

A. Nothing else.

Q. Were the entries from this private and pur-

chase ledger transferred into the trial balance book, so called? 3217

Mr. Cohen: Objected to, leading.

Objection sustained.

Q. Into what balance book were the entries from the purchase ledger transferred?

A. At the end of each month to the book entitled trial balance book.

Trial balance book marked Exhibit R902 for identification, April 26th, 1911.

Q. When you say that the entries from the purchase ledger were transferred into the trial balance book you mean Exhibit R902 of this date for identification. 3218

A. Yes, sir.

Book identified as private and purchase ledger marked Exhibit R903 for identification, April 26th, 1911.

Q. Now I show you a book marked ledger, what book is that?

A. That is the general ledger of the company from January 1st, 1910.

Q. And after the time of your employment in April, 1910, did you make the entries in this book?

A. I bought the book and started and went back to the first of January and made the general ledger from the first of January, right on. 3219

Marked Exhibit R904 for identification, April 26th, 1911.

Q. Were the entries in this ledger from the time of your employment on made by you?

A. They were.

Q. And were they correctly made?

A. Yes, sir.

3220 Q. And were they made at or about the dates they bear date in this book?

A. Yes, sir.

Q. Were the entries in the private and purchase ledger marked Exhibit R903 of this date for identification made by you?

A. Yes, sir.

Q. And were they correctly made?

A. They were.

Q. And were they made at or about the dates they bear date in the book?

A. Yes, sir.

Q. Into what balancebook, if any, were the en-
3221 tries from this ledger marked Exhibit R904 of this date for identification transferred?

A. Into the book called the trial balance book under the head of private ledger trial balance.

Q. Now, will you identify the pages of this trial balance book into which the general ledger was transferred?

A. Pages 28 and 29.

Q. And that is the trial balance, is it, of this ledger which has been marked Exhibit R904 for identification?

A. It is.

Q. Now, the private and purchase ledger marked
3222 Exhibit R903 of this date for identification, upon what pages of the trial balance book have they been transferred?

A. Pages 25 and 26.

Q. Those pages 28 and 29 and 25 and 26, are they complete trial balances?

Mr. Cohen: Objected to as involving a conclusion of the witness.

Question withdrawn.

Q. Are pages 25 and 26 and 28 and 29 a complete trial balance of these two books?

Mr. Cohen: Objected to as involving a con- 3223
clusion.

Objection overruled.

A. My O. K.—O. K., correct, C. B., is marked at the bottom of each trial balance.

Q. Is that mark on pages 25 and 26 and 28 and 29?

A. It is on page 26 which is the end of page 25.

Q. Now turn to pages 28 and 29, is that the same way?

A. The debit and credit balance agree, proving a balance.

Q. Now, this book marked sales which I now show you is what? 3224

Q. What does that book show?

A. That is the general sales book of the company.

Mr. Cohen: Did the witness keep those books?

Q. Is this one of the books that you kept?

A. I posted from it?

Q. How often?

A. Every day.

Mr. Cohen: I move to strike out the wit- ness's answers on the ground that it is not responsive to the question.

Motion allowed. 3225

Q. What did you have to do, if anything, with this book marked sales?

Mr. Cohen: Objected to upon the ground that the witness only posted from it.

Objection withdrawn.

A. Simply posted each day from the customers' ledger.

Q. You posted from that book marked sales into the book marked customers' ledger?

3226 A. Into each customer's account and at the end of the month added this sales book up, all the columns and pages for the month and obtained the total sales to post, to make a journal entry to post into the controlling account in the general ledger.

Q. Did you ever find any inaccuracies in this sales book?

A. There were errors in addition, different months.

Q. Did you correct them?

A. They were corrected later by a firm of accountants who audited the books.

3227 Q. For whom?

A. For the Schwab Kepner Company, I presume.

Q. Do you know the name of the accountants?

A. Hart Brothers, Tibbetts & Herrin.

Q. What clerk had direct charge of the making of the entries in this book marked sales?

A. The bill clerk and stenographer, a young lady entered these from the charge sheets or vouchers.

Q. What was her name?

A. Miss Walsh.

Q. Who made the entries on the charge slips?

A. That I am not sure of. Sales manager, I suppose.

3228 Q. Do you know whether or not a copy of the entries in this sales book went to Mr. Dockendorff every day?

A. They did.

Q. Did they?

A. Yes, sir; to my best knowledge.

Mr. Cohen: Do you know of your own knowledge?

A. I have seen her making out what they called sales records of all the sales entered in this book, they were made a record of and sent down.

By Mr. Cohen:

3229

Q. Did you ever take any down yourself?

A. No, sir.

Q. Did you ever see any in his office?

A. No.

Mr. Cohen: I move to strike out this testimony on the ground that it now appears to be purely hearsay on his part.

Motion allowed.

Sales books marked Exhibit R905 for identification, April 26th, 1911.

Mr. Wolf: I offer in evidence pages 25 and 26 and pages 28 and 29 of the trial balance book contained in Exhibit R902 for identification of this date; I offer in evidence book marked private and purchase ledger R903 for identification; the book marked ledger R904 for identification of this date.

3230

Cross examination on the offer by Mr. Cohen:

Q. Are any of these books, books of original entry, Mr. Barlow, you can answer that with yes or no.

A. I suppose, no.

Q. Why do you say you suppose, don't you know that a ledger is not a book of original entry?

3231

A. I never had such a question brought up in my mind.

Q. So you never stopped to think, as a bookkeeper, whether or not a ledger was a book of original entry?

A. No.

Q. Where did you learn bookkeeping?

A. At High School in Brooklyn.

Q. Did you ever keep any book of original entry, yourself, in that firm?

A. No.

3232 Q. All you did was post from one book to another and add up?

A. Yes, sir.

Q. And these books here represent your posting and your adding up?

A. Yes, sir.

Q. And you testified that your adding up was found to be defective when the firm of accountants examined it?

A. Yes, sir.

Q. And that was a firm of accountants employed by your employer to go over your work, is that the fact?

3233 A. I don't know who employed them or who they represented.

Q. But you undertook to say that Dockendorff got certain papers a few moments ago when you didn't know anything about it?

A. I simply saw them in envelopes addressed to him and sent down by a boy.

Mr. Cohen: I object to these books upon the ground that they are not the books of original entry and they have not been shown to have been accurately kept.

Objection sustained.

3234 By Mr. Wolf:

Q. Take Exhibit B903 for identification, the so-called private and purchase ledger from what books were the entries in that book taken? That is, from the time of your employment on.

A. From the purchase journal.

Q. What book is this that I now show you marked purchase No. 1, S. K. Co.?

A. That is the purchase journal.

Q. And who made the entries in that book?

A. I did.

Q. From what date on?

A. April 10th, the day I came there. 3235

Q. Is this the book of original entry?

A. It is the original entry from the invoices received from the people we bought from.

Q. And were the entries in this book made at or about the date that bear date in the book?

A. They were.

Q. And were they correctly made from the invoices?

A. Yes.

Q. They were made from the invoices as they came in or went out?

A. Yes, sir.

Marked Exhibit R906 for identification, April 26th, 1911. 3236

Q. Now, what is the date of the last entry in this book?

A. August 29th, 1910.

Q. I now show you a book marked general journal No. 1 S. K. Co. and ask you what that is?

A. That is in part, certain columns, a continuation of this purchase journal, the general journal of the company.

Q. It does continue, does it not, the entries in this book?

A. After August 29th the entries went in the general journal in columns prepared for that purpose. 3237

Q. And were the entries in this so-called general journal made by you?

A. Yes.

Q. Correctly made?

A. Yes, sir.

Q. And made at or about the date they bear date in the book?

A. Yes, sir.

Q. Made from what?

3238 A. Original bills received.

Q. I am talking simply with respect to the purchases.

A. From the bills sent us by the mills.

Q. At or about the time the bills came in?

A. Yes, sir.

Marked Exhibit R907 for identification. April 26th, 1911.

Q. Now, the entries in these two books marked Exhibits R906 and R907 for identification of this date were transferred by you into what book?

A. Trial balance book.

3239 Q. And do they also go into this private and purchase ledger No. 1 which has been marked Exhibit R903 of this date for identification?

Mr. Cohen: I ask that before the witness answers the question he hear the previous question and answer read to him.

Previous question and answer read.

A. Into the general ledger and into the purchase ledger.

Q. And by purchase ledger you mean what, this book?

A. Yes, sir.

Q. Private and purchase ledger No. 1 S. K.
3240 Co.?

A. Yes, sir.

Q. That is, Exhibit R903 for identification of this date?

A. Yes, sir.

Q. And then into what?

A. General ledger.

Q. Which has been marked Exhibit R901 of this date?

A. Yes, sir.

Mr. Wolf: Now, Mr. Referee, I offer in evidence Exhibit R907 for identification of this date; R906 and R903.

Cross examination on the offer by Mr. Cohen: 3241

Q. All of these books relate to entries of purchases made by the Schwab-Kepner Company, do they not?

A. Yes.

Q. And the only books of original entry are Exhibits R906 and R907?

A. Yes, sir.

Q. Are all of the entries in R906 and R907 in your handwriting?

A. Yes, sir.

Q. Every one of them?

A. From the time I was there, always with the provision after the other bookkeeper left. I was 3242
in entire charge after he left.

Q. Just look at the books.

A. The first month and a half he may have made some of the entries and I may have made some. Starting on April 10 there were fifteen or twenty, about twenty entries made by the other bookkeeper and then I made the entries for a page or two and then he made a few and then I made a few and then in May he made a few entries, three entries on one page and otherwise it is all my handwriting. May 7th was the last entry he made.

Q. Did you make entries in this book every 3243
day?

A. If bills were handed to me every day. Whenever I had any bills given to me to post.

Q. Who gave you the bills?

A. Handed to me by the bill clerk.

Q. Who was the bill clerk?

A. Fred Heene.

Q. And what were the bills that you entered into this book?

A. Goods bought from the different mills.

Q. Did you see the goods?

A. No, sir.

3244 Q. Did you know where the goods were shipped?

A. No, sir.

Q. Did you know where they were received?

A. No, sir.

Q. Did you know at the time you made those entries?

A. What they were and went to, I didn't know.

Q. You don't know whether or not they were shipped immediately by the mills or held for future shipment?

A. Simply what I heard the bill clerk say. I don't know.

Q. Was there anything in the entries which you
3245 made in this book to indicate whether or not any of the bills which you posted covered goods shipped to the bleacheries?

A. Nothing in the books to show.

Q. Or anything in these books to show any goods held at the mills for future shipment but charged to the Schwab-Kepner Company?

A. Such information was on the bills but I didn't copy it into the books.

Q. But there was upon the invoice indication in some instances that the goods were held at the mills for future shipment?

A. Yes, sir.

3246 Q. But that you didn't put into the books?

A. No, sir.

Q. So that these entries do not represent actual receipts of merchandise by the Schwab-Kepner Company but merely a posting into this book of the bills handed to you?

A. Yes, sir.

Q. Regardless of the fact of whether or not the goods were shipped from the mills?

A. Yes, sir.

Q. You didn't keep track of the actual shipments?

A. I know nothing about it.

Q. So you don't know whether any shipments were cancelled after you posted them or not? 3247

A. No, sir.

Q. You don't know anything about that?

A. Not a thing.

Q. You had nothing to do with that at all?

A. Absolutely nothing.

Mr. Cohen: I object to the admission of these books upon the ground that they furnish no evidence at all, they show nothing except the receipt of bills from the mills.

By Mr. Wolf:

3248

Q. When a purchase of goods by the Schwab-Kepner Company from one of the mills was cancelled what general routine would be gone through?

A. Why I would receive a credit bill from the mills.

Q. And would you enter that in the books?

A. Yes, sir.

Q. In this book here?

A. Yes, sir.

Q. So that if you received any information that the Schwab-Kepner Company cancelled a purchase which it made that would be entered in the books? 3249

A. If a bill had already been rendered.

Mr. Wolf: I renew my offer.

By Mr. Cohen:

Q. You mean if the Schwab-Kepner Company cancelled you would make an entry?

A. If we received an invoice and then turned around and told them not to ship they would send us a credit bill.

Q. That would cover the cases where the Schwab-Kepner Company cancelled the order?

A. Yes.

3250 Q. But it would not cover the cases where the mills didn't actually ship the goods because, as you have testified, you did not know anything about that?

A. No.

Q. And until you received information that they were not actually shipped you didn't know about it?

A. No, sir.

Q. And the only cancellations you entered were those cancellations for which you received a credit slip?

A. I don't know whether the credit was for
3251 goods not shipped or mostly for allowances.

Q. All you did know is that the credits were mostly for allowances?

A. I can't tell whether they were for both or which was the most. I can't say for sure which the credits were for.

Q. But you are not prepared to swear are you of your own knowledge that the entries in this purchase book represent goods actually shipped from the mills to the Schwab-Kepner Company?

A. I know some of them are because I have seen cases.

Q. All of them?

3252 A. No, sir.

Q. Only those cases which you happened to see come in you know about?

A. Yes, sir.

Q. And the other cases you know nothing about?

A. I know that they must have been shipped.

Q. That you know?

A. Yes, sir.

Q. And you know that customers paid for goods shipped direct to the customers from the mills?

A. Yes.

Q. Is there anything in these books to indicate where goods were shipped direct to customers?

A. There may be in the sales book.

Q. But not in the books now offered in evidence? 3253
A. No, sir.

Mr. Cohen: I renew my objection.

By the Master:

Q. What became of the original purchase slips?

A. Filed in the filing cabinet. The purchase slips you say?

Q. Yes, from which you made entries in these books?

A. I don't remember saying purchase slips. Invoices from the mills.

Q. What became of these?

A. Those were filed.

By Mr. Wolf: 3254

Q. When the mills didn't ship the goods and held the goods and subsequently never shipped them would the Schwab-Kepner Company receive the credit then?

Mr. Cohen: Objected to upon the ground that it is leading and I make my objection in the light of the fact that the witness has frequently replied to leading questions without considering the effect of his answers.

Objection overruled. 3255

Question read.

A. That bill would never be entered in our books, originally.

Q. Why not?

A. Because we never got the goods if they were never shipped.

Q. Do you mean then that you entered the purchase of the goods in these books only after the goods were received?

Mr. Cohen: Objected to upon the ground

3256 that the witness has already testified that he knew nothing about the receipt of merchandise.

Q. What do you mean by your last answer? Explain that a little more fully.

A. Bills would be entered there on, for instance, April 30th, that were for goods billed and invoices April 1st. The goods might not have been shipped and bill of lading showed that they were not shipped they would not be entered and passed to me O. K. until the goods had been proven to be shipped; otherwise I would not get the bills until
3257 the dates they are entered under and they were put down say on May 10th as of bill of say May 1st.

Mr. Cohen: I move to strike out the answer as purely hearsay, based now upon things that he understands are necessary to establish counsel's case.

Q. You said in your last answer that you only made the entries when the goods were proven to have been shipped; what do you mean by that, what proved to you that they had been shipped when you made the entries?

3258 Mr. Cohen: I ask that my motion be ruled on.

Master: I think the answer tends to show the method of keeping the records and I will deny the motion. Of course it is of no value in so far as it includes matters outside of the witness's own knowledge.

Question read.

A. The appearance in the files of bills of lading from the mills.

Q. And which you saw?

A. Which I saw the bills of lading from the

different mills showing shipments of goods to us, to customers, to bleacheries, etc., so marked and the bill clerk didn't give me the invoices until he had such evidence that it had been shipped, he wouldn't O. K. the bill. 3259

Mr. Wolf: I renew my offer.

By Mr. Cohen:

Q. You testified when I asked you questions before that the invoices sometimes contained statements that the goods were held at the mills but that you did not copy the fact that they were held at the mills into your books, did you so testify? 3260

A. Yes, sir.

Q. Was that the truth?

A. Held at the mills subject to our order.

Q. So that you did copy into these books invoices where the goods were held at the mills, isn't that the fact?

A. I posted later the invoices.

Q. Did you testify here in your examination that you entered into this book invoices that showed upon their face that the goods were held at the mills?

A. Yes.

Q. So that you did testify that you made entries in these books of goods that were held at the mills and you knew it from the fact that the invoices so stated? 3261

A. No, sir, the bills read that way but that did not prove that they were still held when I posted the invoice.

Q. Did you make any investigation yourself to determine whether the goods were at the mills at the time you posted the invoice?

A. I did not.

3262 Q. Did you have the bill of lading attached to every invoice which you posted in this book?

A. No, sir.

Q. Was it your custom to check up the invoices which you posted into this book with the bills of lading before you made the entry?

A. It was not my business to do that.

Q. So that you received the invoices and posted them into this purchase book?

A. Yes.

Q. What happened before that you don't know anything about?

A. No, sir.

3263 Q. Where the goods were shipped you don't know anything about or didn't know at the time you made the entries in this book?

A. Not to what particular place.

Q. Nor whether or not they were shipped or held at the mills, you don't know, do you?

A. What I was told.

Q. I want what you know yourself.

A. You sometimes have to know what you are told.

Q. Did you have any knowledge at the time you made those entries from these invoices as to whether as an actual fact these goods were held
3264 at the mills or shipped?

A. I had knowledge and belief that they were shipped or held under instructions or the bill wouldn't have been O. K. without proof.

Q. But you know that some of the goods were held by instructions, awaiting instructions?

A. Yes.

Q. So that you know those goods at least were not shipped?

A. Yes, sir.

Q. So you can't state that every entry there

represents goods actually shipped from mills, can 3265
you?

A. My impression is that they were shipped, yes.

Q. That is your impression?

A. What I was given to understand.

Q. That is your opinion?

A. Yes.

Q. But you can't swear to that as a fact, can you?

A. No.

By Mr. Wolf:

Q. You testified that it wasn't your business 3266
to check up the invoices from the mills with the bills of lading; who did that?

A. I don't know.

Q. Who passed the invoices to you?

A. Fred Heene, the bill clerk.

Q. And did he O. K. the invoices before he passed them to you?

Mr. Cohen: Objected to, leading.

Question withdrawn.

Q. What did he do with the invoices before he passed them to you?

A. Checked up the extensions and additions. I 3267
saw him check up the extensions, figure out the extensions and add up the additions before he handed the check to me and I understood from him—

Mr. Cohen: He should not be allowed to testify to what he understood from him.

Q. What was the general course of business as you understood it before the invoices were passed to you?

Mr. Cohen: Objected to as involving a

3268 conclusion of the witness, hearsay evidence and not binding upon Dockendorff.

Question amended to

Q. What was the general course of business at the Schwab-Kepner Company after an invoice was received from the mills before it came to you for entry in the books?

Question withdrawn.

Q. Do you know what the custom was with respect to the checking of the invoices before they were passed to you?

3269 A. I have seen the girl checking up bills of lading.

Q. Do you know what the custom was an then we will ask you what it is?

A. I can't say any definite custom they had that they went through before the bill was O. K.

Q. What was the general course of business, you can tell what happened to the bill or invoice before it was passed to you, can't you?

Mr. Cohen: I submit that the last question gives the witness opportunity to testify concerning—

Question withdrawn.

3270 Q. Can you tell what the general routine of the business was, what was done with invoices received from the mills before they were passed to you for entry in the books?

Mr. Cohen: I ask that the witness be instructed as to the words custom and routine.

A. I don't think I can tell what the general custom was.

Q. I asked you what was the routine of the

business, what was done with an invoice before it 3271
was passed to you for entry in the books?

A. I don't think I can state definitely anything more than I have.

Q. Well, you haven't stated anything yet. Now, I will ask you as if you never had heard this question before—what was done with the invoices before they were passed to you for entry in the books?

A. I can testify as to what I have seen. I have seen the bill clerk check the extensions and the additions before handing the bills to me and was told by him very often when I asked for invoices that I couldn't get them because they hadn't been 3272
checked, goods hadn't been shipped and he couldn't O. K. them until they had.

Mr. Cohen: I move to strike out the answer upon the ground that it does not give the general routine or custom.

Motion allowed.

Q. Can't you tell us what was done with the invoices as a general thing before they were passed to you for entry in the books?

Mr. Cohen: Objected to upon the ground that it appears that the witness has no personal knowledge as to what was done with 3273
the invoices before he received them except as to what he saw the bill clerk do as to extensions and additions.

Objection overruled.

A. I know that Mr. Kepner opened the mail and took out the invoices; some of them went to Mr. Corbett the Treasurer, and he was the one to O. K. them and see if certain ones were shipped and then if O. K. they were given to Heene to check up

3274 and if his extensions checked all right they were handed to me to post.

Master: That was the general routine?

A. So far as I know. I really don't know anything further back than this bill clerk checking the bills. I don't really know who held them up before he got them except that it must have been either Mr. Kepner or Mr. Corbett.

Mr. Wolf: I offer in evidence the books of the company on the testimony as it now stands.

3275 Mr. Cohen: Objection renewed.

Objection sustained.

Mr. Wolf: I understand from your Honor's ruling that the only reason the objection is sustained is that it does not appear by this witness's testimony that he received the invoices for entry in the books after the goods had been shipped and I may cover that point by another witness.

Recess Taken.

3276 After Recess.

CHARLES G. BARLOW, examination continued:

By Mr. Wolf:

Q. I show you Exhibit R901 for identification of this date, so-called ledger; from what original books of account were the entries in this ledger made?

A. From the general journal, from the purchase journal, from the sales book, from the cash book.

Q. I show you book marked Cash No. 1 S. K. Co., 3277
and ask you what that book is?

A. It is a cash book of the Schwab-Kepner Company which I started August 1st, 1910.

Q. I show you book marked Cash No. 1 S. K. Co. what is that?

A. That is the cash book that they were using when I came there.

Q. Will you tell me the date of the last entry in that book made by anyone other than yourself?

A. The 3rd of May, 1910.

Q. Made by whom?

A. Mr. Conran.

Q. All other entires in that book are made by 3278
you?

A. Yes, sir.

Q. After that date?

A. Yes, sir, after that date.

Q. What entries are contained in that book, what is the nature of them I mean?

Q. All cash and checks received from customers or from Dockendorff or from notes discounted at the bank, all checks paid out for purchases, interest at the bank, money turned over to Dockendorff and sundry expense bills.

Q. From what original records did you make the record in that book?

3279

A. The remittances received from customers, from their remittance slips and checks entered under the sales accounts, together with the discount allowed, also entries from Dockendorff's checks, entries from the stubs of the check books. All payments made out are entered on the credit side, all the checks which we received from the customers and gave them credit for and turned them over to J. E. Dockendorff.

Master: Did you make that last entry directly from the checks?

3280 A. We made it up—

Master: Did you make the entry from the checks?

A. Remittances were handed to me, they were put in the cash book, they were then handed to the stenographer, Miss Walsh, who made up the remittance sheets to Doekendorff which agreed with the addition of the checks given by me. I also entered from notices received from the banks of proceeds of notes which they placed to our credit. When I received such notice I would debit the cash. Also when notes payable were due on certain dates,
3281 when they became due on that date and were charged against us at the banks it would be entered in the cash book.

Q. Were they all made at or about the date they bear in the cash book?

A. Yes, sir.

Q. And were they correctly made by you?

A. Yes, sir.

Marked Exhibit R908 for identification, April 26th, 1911.

Q. I show you another book marked cash, what is that book?

3282 A. That is the cash book from August 1st on.

Q. Entries made by you?

A. By me, yes, sir.

Q. In your handwriting?

A. Yes, sir.

Q. At or about the date they bear date?

A. Yes, sir.

Q. Correctly made?

A. They were.

Q. And from the same sources as Exhibit R908?

A. Yes, sir.

Marked Exhibit R909, for identification, April 26th, 1911.

Q. The sales book you have testified to is this book which I now show you, is it? 3283

A. Yes, sir.

Q. Marked Exhibit R905 for identification of this date?

A. Yes, sir.

Q. This sales book which I show you now, the first entry is dated what? I refer to the sales book Exhibit R905?

A. July 5th, 1910.

Q. And the entries in this book are in typewriting?

A. Yes, sir.

Q. And you testified this morning that Miss Walsh kept the book. 3284

A. Yes, sir.

Q. I show you another sales book dated November 1st, 1910 and ask you what that is?

A. This is a continuation of the same sales book under a new binder.

Q. Kept by Miss Walsh?

A. Miss Walsh.

Marked Exhibit R910, for identification, April 26th, 1911.

Q. I show you another sales book, is that the sales book that preceded Exhibit R905? 3285

A. It seems to be a part of all the books, the pages being bound in here, part that preceded and part that go in both.

Q. These three sales books contain all of the sales entries from May 1st, 1910, down to the time of the receivership, do they not?

Mr. Cohen: Objected to upon the ground that the witness did not keep the books and cannot testify as to the entries.

Objection sustained.

3286 Q. Do you know of any other sales books of the Schwab-Kepner Company for the period from May 1st down to the receivership except the three you have identified.

A. None except these three.

Marked Exhibit R911 for identification. April 26th, 1911.

Q. Now, these three sales books were kept by whom, I mean Exhibits R905, R910 and R911?

A. Written on the typewriter by Miss Walsh, sheets put in the binder, given to me from which I posted, adding the totals each day, posting each
3287 day and seeing that the consecutive numbers of the pages were on there and all the consecutively numbered sheets in the binder.

Mr. Cohen: I move to strike out the answer except such portion as shows that Miss Walsh kept the books.

Motion denied.

Q. And how often did you post from Exhibits R905, 910 and 911?

A. Every day.

Q. You testified that you made entries in Ex-
3288 hibit R904 from the purchase journal, is that correct?

A. Yes, sir.

Q. Is this book that I now show you the first purchase journal from which you made entries into R904?

A. It is.

Q. And that book is Exhibit R906?

A. It is.

Q. Now, the other purchase journal, is that the purchase journal which I now show you?

A. Yes, sir.

Q. Exhibit R907? 3289

A. Yes, sir.

Q. The general journal which you testified you posted into the ledger is that the book I now show you?

A. This is the general journal that was there when I came there in April.

Marked Exhibit R912 for identification, April 26th, 1911.

Q. Now, will you please look at Exhibit R912, the general journal and tell me the last entry in that book made by any person other than yourself? 3290

A. On June 30th entries were made by a Mr. Jones, who was assisting in the office.

Q. Now, go backwards and tell me the next entry made by anyone other than yourself in that book?

A. March 30th appears to be the last entry, made by Mr. Conran.

Q. How many entries did Jones make in the books?

A. There seems to be three pages.

Q. What pages are they?

A. 376, 377 and 378.

A. June 30th, all appear to be dated June 30th. 3291

Q. What is the last date in that book?

A. July 30th.

Q. Then after that is the general journal carried into Exhibit R907?

A. Yes, sir. August 1st.

Q. What is the nature of the entries contained in the general journal, Exhibit R912?

A. All usual journal entries in any business in order to debit and credit any account which

[2262] couldn't be done through the sales, purchase or cash books.

Q. And from what papers, records or documents did you make the entries?

A. Some entries were made from the original credit bills sent to the customers, some were made from interest which had to be figured by me to be charged against certain creditors' accounts, most of them for mental reasons.

Q. Were they made from original documents by you?

A. They would be made, the figuring out of the interest would be made by me on paper.

[2263] Q. But I mean the credits, would they be made from original documents?

A. From the copies of the original documents sent to the customers, the carbon copies of which we kept on file.

Q. Were the entries in that book 1912 made by you at or about the date that they bear date in that book?

A. They were.

Q. And were they correctly made?

A. To the best of my belief.

[2264] Sworn to before me this 26th day of April, 1911.

CYRUS WILLIAMS, recalled: 3295

Examination by Mr. Wolf:

Q. Mr. Williams, I show you pages 25 and 26 of Exhibit 3295 for identification of this date which is headed purchase ledger trial balance and I ask you did you ever see the monthly trial balances on these pages appearing?

A. My recollection is that I saw these monthly trial balances, but I am not prepared to swear whether I saw any particular one in this shape, in the book. I saw it in its rough draft before it was put into the book.

Q. Would you see them at the times that they 3296
were made?

A. Approximately.

Q. The purchase ledger trial balance, July 31st, 1910, you saw that at or about that time?

A. Yes.

Q. And the August 31st, purchase ledger trial balance at or about that time?

A. Yes.

Q. And the same applies to the September 30th?

A. Yes.

Q. And to the October 31st?

A. Yes.

Q. Did you have anything to do with preparing 3297
these trial balances or checking them, and if so, what?

A. Only sometimes when they had some trouble in working them out, I helped them out.

Q. After they were prepared did you go over them to see whether or not they were correct?

A. No, I did not. You mean by that compare the names and amounts?

Q. No, did you look at the trial balances to see whether or not they purported to show the balances?

A. They purported to be correct and I accepted them as such.

3298 Q. I show you pages 28 and 29 headed general ledger trial balance and ask you if you saw the trial balance appearing there of July 31st, 1910?

A. I saw all these trial balances although I am not prepared to swear that I saw them in this book. I probably saw them in rough shape before they were entered into that book.

Q. In other words, sometimes you saw them in the rough shape?

A. That is correct.

Q. And sometimes in this book?

A. Probably both ways.

Q. And you saw them at or about the date they 3299 were made?

A. At or about the date they were made, yes.

Sworn to before me this 26th day of April, 1911.

CHARLES G. BARLOW, recalled:

Examination by Mr. Wolf:

Q. Mr. Barlow, did you before writing the trial balances on the pages 25 and 26 and 28 and 29 draw them on a rough sheet and then write them 3300 into this book?

Mr. Cohen: Objected to, leading.
Question withdrawn.

Q. What did you do before writing the trial balances on pages 25 and 2; and 28 and 29 of the trial balance book?

A. I can't say positively how many, if any, I ever put on the plain sheets of paper first. My impression is that I put them right into the book in pencil until such time as I proved the addition and the balance and then I inked them in.

Q. But if you did put them on a rough sheet before putting them into the book were they correctly copied into the book? 3301

Mr. Cohen: Objected to upon the ground that the question is hypothetical.

Overruled.

A. They were correctly copied into the book, absolutely correct.

Mr. Wolf: I now offer in evidence pages 25 and 26 of the Exhibit R902 for identification, from and including July, 1910.

Mr. Cohen: Same objection.

Mr. Wolf: In answer to the Master's suggestion and Mr. Cohen's argument I will say now that the books of original entry are here and I will offer now the Exhibits R902 to R912 for identification in evidence. 3302

Mr. Cohen: I object to the books going in evidence upon the ground that it appears from this morning's proceedings and the statements made by counsel some of which are not upon the record because they were not taken down that the purpose of putting these books in evidence is to establish the actual condition of affairs of the Schwab Kepner Company which is to be shown by the report of the expert accountants. Your Honor will recall, although perhaps it may not appear of record that this morning counsel first called the accountant and submitted, before examination, a copy of the accountant's supplemental report and was proceeding to examine the witness as to the sources of his information when the objection was raised that the first thing to do was to establish the basis of the account 3303

3304 ant's work before his testimony could be given. Your Honor decided that that was the proper method. We then proceeded to establish the basis for the accountant's work and we spent all morning upon that task; not once was it suggested that the purpose of offering the books was to charge Mr. Dockendorff with notice of any of the entries contained therein. Counsel, having found it difficult to prove the facts upon which the accountant's deductions were to be based now seeks to offer the books under the theory that they are binding upon Mr. Docken-
3305 dorff because Mr. Williams happened to be there when the books were being kept and sometimes saw them. The books, as books, may be admissible upon that theory but counsel has contended before you that if they once get in upon that theory they go in as evidence of the facts purporting to be recorded therein and his associate contends that they constitute the highest form of evidence, binding upon our client, because they constitute an admission on our part of the facts which they purport to record. Since the books are not intended to be put in evi-
3306 dence for the purpose of charging Dockendorff with notice of the things contained therein but are in fact offered for the purpose of supporting an accountant's computation which will show the actual condition of affairs, we are entitled to insist upon the rules of law which your Honor laid down this morning that the actual facts are to be proven by the best evidence and I call your Honor's attention to the fact that so far as we are charged with notice of the actual facts if that be the rule that already

appears in the testimony of Mr. Williams so that the evidence of the books themselves is unnecessary to charge us with notice. It appears already that Mr. Williams had access to the books so we come back to the only remaining question what are the actual facts with which Dockendorff is charged, if he is charged with notice of them? To establish the actual facts as they existed it is necessary to prove it by competent evidence and I submit that it is not fair to put in evidence a trial balance book or a book of purchases purporting to be a record of goods received by the Schwab-Kepner Company on a certain day when it already appears that they are nothing more nor less than records of invoices received. Surely they have gone far enough in this case already for your Honor to know the difference between an invoice and an actual account, indeed one of the most serious contentions made by the other side is that we had invoices which we put upon our books as representing valid things when in fact we didn't have any merchandise shipped to the customers upon which that invoice rested. We are now in the branch of the case wherein counsel is attempting to show the actual facts, not as things seem, but as they were, and to prove things as they were he ought to follow the rules of evidence so far as knowledge of the contents of the books are concerned. 3307 3308 3309

Mr. Wolf: Mr. Cohen has argued what effect the books will have if they are in evidence; for the moment we are content ourselves with saying that Mr. Williams as Mr. Dockendorff's agent saw these trial balances, checked them up from month to month at

3310 or about the date they were made and approved them, admits that they are correct, that is an admission he makes upon the witness stand. If we had called Mr. Dockendorff and asked do you admit these facts to be true the testimony could not have been any more binding than it is. Now, if, as Mr. Cohen has constantly contended, without any just reason, we feel, that we haven't given all the information, if he wants any further information we will let him put it in or if he wants us to put it in we will do so, but he cannot say you
3311 haven't given us all the information, why don't you put it in evidence and then object to it. My offer for the moment is limited to the specific pages, if Mr. Cohen desires to have me offer the supporting books in evidence at this time or if he desires to do so there will be no objection.

Master: I will receive the pages of the trial balance for the sole purpose of showing that the contents were communicated to Mr. Williams, the agent of Mr. Dockendorff and not as showing the truth of the facts purporting to be recorded.

3312 Master: Mr. Cohen has called to my attention that on page 1327 of the testimony where I admitted in evidence Exhibit R902-A, April 26th, 1911, consisting of pages 25 and 26 of a certain book, the trial balance book, the record does not show the purpose for which the exhibit was admitted, although it was stated at the time that it was admitted for a limited purpose; and he has asked me to indicate on the record the purpose for which it was admitted; Mr. Wolf,

do you see any reason why it shouldn't be done? 3313

Mr. Wolf: I see no reason why the record should not correctly express what the ruling was.

Master: The ruling should read, "Pages 25 and 26 received in evidence and marked Exhibit R902-A, April 26th, 1911; being received in evidence for the sole purpose of showing notice given to Mr. Dockendorff and not for the purpose of establishing the truth of the contents of those pages."

Mr. Wolf: In any event we can show by the expert who compiled the figures what 3314
specific parts were called to the attention of Mr. Dockendorff's attention and it seems to me that will be perfectly proper under the Master's ruling.

Mr. Cohen: I have argued upon the assumption that Mr. Williams was our agent; we haven't admitted that as a proposition of law, we have merely accepted that for the purpose of arguing simply because your Honor has ruled that you would take such evidence heretofore. I want also in view of counsel's last statement to call attention to the fact that any evidence which is offered 3315
based upon computations made from these books upon the assumption that they contain records of the transactions will be objected to upon the ground that the basis has not been established.

Pages 25 and 26 received in evidence and marked Exhibit R902A, April 26th, 1911.

Mr. Wolf: I also offer in evidence pages 28 and 29 of the general ledger trial balance in the same book.

Mr. Cohen: Same objection.

3316 Received in evidence for the same purpose as the pages 25 and 26 and limited to that purpose and marked Exhibit R902B, April 26th, 1911.

Mr. Wolf: While we are glad to have this book in evidence even for a specific purpose, our offer is for every purpose and we do not wish to be understood as agreeing to that.

Mr. Wolf: I offer in evidence the two cash books marked Exhibits R908 and R909 for identification of this date.

Received in evidence and marked Exhibits R908 and R909 in evidence, April 26th, 1911.

3317 Mr. Wolf: I offer in evidence the sales books R905, R910 and R911 for identification of this date.

By Mr. Cohen:

Q. I understood you to say, Mr. Barlow, that the entries in R905, R910 and R911 were not made by you?

A. They were not.

Q. They were made by Miss Walsh?

A. Miss Walsh.

Q. And they were made by Miss Walsh, a typewritten copy of something else that was typewrit-
3318 ten?

A. Yes, sir.

Q. And what was it that was typewritten, the bills sent to the customers?

A. And sales orders, sales slips and records of what was to be sold or to be shipped to the customers from which figure or amount was to be made out the invoice.

Q. That is a record then of sales of merchandise, regardless of whether or not the goods were shipped?

A. Yes, sir.

Q. In other words a record of the orders taken by the Schwab-Kepner Company for goods to be furnished to customers? 3319

A. It might not be all the orders.

Q. But so far as it does contain a record it is a record of orders received by The Schwab-Kepner Company?

A. So I understood.

Q. And it does not contain any record of the delivery of the goods to the customers?

A. No.

Mr. Cohen: I object to the introduction of the books on the ground that a proper foundation has not been laid and upon the further ground that they do not contain evidence of the facts as they actually existed. I make the further objection that there is no issue upon which the amount of orders received by the Schwab-Kepner Company at any particular time after the first of August or at any earlier date has any material bearing. 3320

Mr. Wolf: There has been considerable testimony as to the sale of goods in the gray and in that respect the amount of orders has a bearing.

Mr. Cohen: If it is offered for the purpose of establishing the fact that goods were sold in the gray, actual sales of goods in the gray, then I make the additional objection that the book does not establish that fact. None of these books are records of the actual sale of such goods by delivery of them to customers, they are merely records of orders taken for the goods. 3321

Mr. Wolf: We offer it in evidence then for the purpose of showing the orders in gray

3322 taken by the Schwab-Kepner Company and the general condition of the Schwab-Kepner Company.

Mr. Cohen: Then I object upon the ground that it is immaterial and irrelevant.

The Master: It doesn't seem to me that the books have been properly proven in the first place and as merely showing orders received by the Schwab-Kepner Company they are not material to this issue, the objection is sustained.

Mr. Wolf: I offer in evidence Exhibit R912 for identification of this date.

3323

By Mr. Cohen:

Q. You have testified that Exhibit R912 was the general journal for the purpose of making entries to be posted into other books?

A. Yes, sir.

Q. The journal entries are entries taken from other books, are they?

A. Yes, sir, and in a good many instances they are additions to other books.

Q. So it is not a book of original entry?

A. Most certainly.

3324 Q. There are a great many entries details of which are recorded in the first instance in other books?

A. I will look and see. Exhibit R912 does not contain any purchase ledger journal entries of goods bought.

Q. What does it contain?

A. The next book does, we continued that journal in the general journal, we combined and kept them in the same book.

Q. What did you put into this book?

A. In here is a record of money collected from

customers with their names and the discount given 3325
from the checks received, being a record of what we sent to Dockendorff each month.

Q. Is that all that is contained in that book?

A. No, it also contains entries of merchandise to sales, entries of the purchase ledger credit to merchandise.

Q. Didn't those entries come from some other books or records?

A. There are entries here of bills payable.

Q. Answer that last question, didn't those entries come from some other book?

A. Yes, sir.

Mr. Wolf: I call upon Mr. Dockendorff to 3326
produce at the next session all invoices received by him from the Schwab-Kepner Company from April 1st, 1910, to date; also all books of account, all card indexes, vouchers and memoranda that he has which he has not heretofore produced respecting his relations with the Schwab-Kepner Company from April 1st, 1910, to date.

Mr. Cohen: We appreciate the request in view of the immense amount of documents that we have already given as the basis of the accountant's work; the documents that have been produced and the opportunity we 3327
have given for the investigation having been in the hands of the accountants for months; if there is anything else we have that can throw any light upon the controversy at this late date we will produce it.

Sworn to before me this 26th
day of April, 1911.

1110 Deposition of John E. Dockendorff.

3328 Adjourned to May 3rd, 1911 at 10.30.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on
3329 hearing on petition of John E. Dockendorff, before Edwin G. Adams, Referee, as Special Master, at No. 115 Broadway, New York City, on Wednesday, May 3rd, 1911 at 10.30 A. M.

PRESENT:

JULIUS HENRY COHEN and GIRARD B. TOWNSEND, Attorneys for Petitioner.

RALPH WOLF and GARRARD GLEN, Attorneys for Trustee.

Mr. Cohen: If your Honor pleases, I am now authorized to appear and bind all of the banks that have any interest in this mat-
3330 ter and I have in my possession written authority to that effect. I am relieved by counsel from stating the names of the banks upon the record but shall furnish them with a letter over my signature giving them the names of the banks in accordance with the stipulation and arrangement we have entered into and that is to be confirmed by Mr. Dockendorff's oath that he has disclosed to me all of the banks that are interested.

JOHN E. DOCKENDORFF, recalled.

By Mr. Cohen:

Q. You are still under oath, Mr. Dockendorff. In

the letter of May 3rd to me, which will be marked 3331
for identification, have you given the full list of all of the banks or financial institutions interested in any way, shape or manner in the Schwab-Kepner Company matter?

A. I have.

Marked Exhibit P1001 for identification, May 3rd, 1911.

Sworn to before me this 3rd day of May, 1911.

BESSIE B. WALSH, sworn. 3332

Examination by Mr. Wolf:

Q. Prior to December, 1910, what was your business?

A. Stenographer and bookkeeper at the Schwab-Kepner Company.

Q. How long had you been with the Schwab-Kepner Company?

A. About five years.

Q. Did you have charge of the books, as an employee of the Schwab-Kepner Company, which I now show you and which have been marked Exhibits R905, R910 and R911 for identification? 3333

A. Yes, I had.

Q. Now, take Exhibit R905 which I now show you, can you tell me how this book was prepared, how you made the entries in it?

A. From the shipping orders.

Mr. Cohen: May it appear on the record that this is the loose leaf book?

Mr. Wolf: Why, yes, I suppose so.

Q. The entries in this book are typewritten, are they not?

A. Yes.

3334 Q. Did you do the typewriting?

A. Yes, sir, I did.

Q. And from where did you get the information that you put into this book?

A. From the back of the shipping orders.

Q. Original shipping orders?

A. Yes.

Q. Shipping orders of what?

A. Goods to be charged.

Q. To customers of the Schwab-Kepner Company?

A. Yes.

Q. And you tabulated what from the shipping
3335 orders?

A. All the entries.

Q. Into the sheets which now comprise Exhibit B905?

A. Yes.

Q. How many copies did you make?

A. Two and sometimes three.

Q. One copy you put into the book?

A. Yes.

Q. What did you do with the other copies?

A. Well, if a customer required a duplicate bill two copies went to the customer, original and duplicate and the certificate we sent down to Mr. John
3336 E. Dockendorff.

Q. What certificate?

A. Certificate of indebtedness.

Q. How did the entries on that compare with the entries contained in B905?

Q. All made out at the same time, taken from these shipping orders.

Q. Were they precisely the same thing?

A. Exactly, yes.

Q. One carbon copy went into this B905 and another to Dockendorff?

A. Yes.

Q. Written on a different blank but at the same 3337
time?

A. Yes.

Q. And one was a carbon copy of the other?

A. Yes.

Q. Were the entries in Exhibit R905 made at or about the time they bear date in this book?

A. Yes.

Q. And were they correctly made?

A. Yes.

Exhibit R905 for identification offered in evidence.

Cross examination on the offer by Mr. Cohen: 3338

Q. These shipping orders were on blank forms, were they?

A. Yes.

Q. Did you prepare them?

A. No, I didn't.

Q. From whom did you get those?

A. I got them from different people in the office

Q. Mention the names.

A. Mr. Gatow checked them.

Q. And who else?

A. They were prepared by Mr. Victor and then they went to Mr. Gatow to be checked up and then they came to me.

Q. Did you have anything to do with the actual 3339
shipping of the merchandise?

A. No.

Q. Did you have anything to do with the actual making of any bills of lading?

A. No.

Q. So this book merely represents the tabulating of the shipping orders which you received from these various gentlemen?

A. Yes.

3340 Q. Did you ever become aware of the fact that the goods which were copied in here were sometimes not shipped from the bleacheries?

A. Yes.

Q. Is there anything in your entries to indicate whether or not the goods were actually shipped to the customers?

A. No.

Q. You did not attempt to keep any record of actual shipments to customers?

A. Just from bills of lading, that's all.

Q. Where did you keep the record of the bills of lading that you received?

3341 A. When I received them I forwarded them to Mr. Dockendorff's office.

Q. In what book did you keep a record?

A. I didn't keep a record of them.

Q. There was no record of goods actually shipped to customers?

A. No.

Q. And the books which you kept here, as you say, represent your typewritten copies of the shipping orders, is that right?

A. Yes, sir.

Q. You had nothing to do with the actual delivery or shipment of the merchandise to the cus-

3342 tomers?

A. No.

Q. You kept no record of that?

A. No.

Mr. Cohen: I object to the book upon the ground that it furnishes no record of merchandise as a basis for the accountants' report for the showing of the exact financial condition of the firm at any particular time.

Master: Why isn't it admissible as showing the orders received?

Mr. Cohen: There is no relevancy or ma-

teriality in showing the orders received. The 3343
supplemental accountant's report, a copy of which has been submitted to me shows that that is not the subject matter of the calculation or computation and for the purpose of showing the actual financial condition of the Schwab-Kepner Company on any particular date it certainly has no material bearing. My point is that so far as it shows a record of orders received it isn't material to any issue before your Honor.

Mr. Wolf: We think it is relevant as showing the sale made by the Schwab-Kepner Company to its customers, not necessary 3344
deliveries, but sales, and it appears that Dockendorff received copies of these books line for line, and we think that Mr. Cohen is sort of prejudging the case when he says that even as orders from the customers entered in the books they haven't any relevancy. I think that on that proposition we will take issue with Mr. Cohen, we think that when your Honor comes to examine these books you will see that from certain standpoints the entries here are interesting and bear upon the issues in this case; for instance, we are going to show what these 3345
books show, when they are in evidence, if they are received, we are going to show the amount of goods in gray or orders for goods in gray taken and accepted by The Schwab-Kepner Company.

Master: Well, Mr. Wolf, a good many of these sales were not consummated, sales for which the goods were not shipped—what bearing have they?

Mr. Wolf: We think we can rely upon the orders taken and accepted. Undoubtedly

3346 some of the goods were never shipped, but that fact does not destroy the efficacy of the books for all purposes.

Master: These books, according to the testimony only purport to show the orders received and not at all the shipments made, it isn't just a few instances, and if it is received it would only be for the purpose of showing the orders received—how is that material.

Mr. Wolf: We want to show the orders in gray, for gray goods which the Schwab-Kepner Company took and accepted.

3347 Mr. Cohen: There is a difference, I think, a very substantial difference between an executory contract and an executed contract which counsel has failed to make in presenting this evidence. The schedules which have been prepared for the accountant to testify to are based upon the theory that these gray goods were actual sales of gray goods. In another branch of this case counsel has contended that goods not shipped from the bleacheries although valid orders were received from the customers, furnished no basis for the assignment of choses in action

3348 to Dockendorff, indeed, he contended that those contracts with customers, so far as Mr. Dockendorff was concerned, had no validity whatever and that subsequent collections on such goods even after delivery to customers cannot be retained by Dockendorff. With strange inconsistency he now contends that for making a comparative statement of the business condition of this concern and executory contract is to be treated as a sale of goods in gray, although it firmly appears that upwards of thousands

of dollars of merchandise were not sent from 3349
the bleacheries although they appear in these books as orders from customers.

Master: According to the testimony it seems to me that this book only purports to show the orders received and I cannot see how that testimony is relevant to this issue, I don't see any bearing upon the issue.

Objection sustained.

By Mr. Wolf:

Q. Miss Walsh, will you please describe more fully from what you made the entries in Exhibit R905?

A. From the shipping orders. Everything was 3350
made from the shipping orders or sales, a blue slip that we called charge slips.

Q. Miss Walsh, I show you a paper which is marked on the top of it in printing, "Shipping order," is that the form of shipping order to which you referred?

A. Yes.

Q. I so understand then, that the entries in R905 were made from these blanks which you have testified are the form of shipping order from which you made the entries?

A. Yes.

3351

Marked Exhibit R1001, for identification, May 3rd, 1911.

Q. From whom did you receive the shipping orders, Miss Walsh, marked Exhibit R1001, for identification?

A. From Mr. Gatow.

Mr. Wolf: I understand, Mr. Cohen, that you have no objection to the form of this order going in evidence without reference to the details on it?

3352 Mr. Cohen: None.

Offered in evidence.

Received in evidence and marked Exhibit R1000, May 3rd, 1911.

The exhibit reads as follows:

3353

3354

Exhibit R1000.

3355

Face

"Shipping Order

THE SCHWAB-KEPNER COMPANY

66, 68 & 70 Leonard St.

No.....

New York.....

Ship to.....

Order No..... .....

Shipping Date .....

Shipping Directions .....

Prepaid..... Collect.....

Value .....

3356

Case No... Pieces.. Shades.. Style.. Mill No...

Consignee Owes $.....

Consignee's Limit ....

Shipment O. Kd. by.....

Shipped.....

Charged.....

Back

"Case Number

Lot No.

Pieces

Style

Yards 3357

Price

Amount

Terms

Salesman

Charge No.

Checked by

Sales Book Folio

Charged by

Verified by

Freight allowance due

" " received

" charged shipper"

3358 Q. Do you know whether Mr. Gatow's initials are A. F. G.?

A. They are.

Q. After you received the shipping order what did you do?

A. I had them filed.

Q. Did you first enter them in the book before you filed them?

A. Oh, surely.

Q. You have an entry in this book, the first entry on page 673, merchandise July 5th, 1910, as September 1st, 1910, what does that indicate?

A. That means that the customer was given an
3359 extra dating to September 1st.

Q. That only refers to the dating?

A. Yes.

Q. Now, referring to this Exhibit R1001,, the shipping order can you tell where Mr. Gatow indicated that he had checked the shipping order before its receipt by you?

Mr. Cohen: Objected to upon the ground that it is incompetent, irrelevant and immaterial and not binding upon Mr. Dockendorff.

Master: I think it is admissible to show the course of business.

3360 Objection overruled.

A. By his signature on the back and the check marks.

Q. Will you read the words and letters you refer to?

A. "A. F. G."

Q. What are the words that precede it?

A. "Checked by."

Q. So that the item is "Check by A. F. G.?"

A. Yes.

Q. Will you please tell what the course of busi-

ness was of the Schwab-Kepner Company prior to 3361
the receipt by you of the shipping order for entry in the books?

Mr. Cohen: If you know.

A. I know that these were made up but by whom I don't remember.

Q. Before you received them what was the general conduct of the business before you received them for entry in those books?

Mr. Cohen: If you know.

Mr. Wolf: Mr. Referee, may I ask that Mr. Cohen be instructed not to interrupt 3362
this examination. I think we may safely assume that the witnesses are not testifying to anything they do not know.

Mr. Cohen: If your Honor pleases, my purpose in inserting those words was—it is perfectly obvious that the witness is inexperienced and it is seldom we find an inexperienced witness who distinguishes between personal knowledge and impressions.

The Master: You are entitled to cross examine the witness but if Mr. Wolf does not enjoy your interruptions you should wait until he has finished.

Question read. 3363

A. They were made up in another department.

Q. Which department?

A. In the merchandise department or the sales department and then they came to the bookkeeping department to be checked and then they went to Mr. Gatow to be checked according to the work on the back of it.

Q. And he checked it and passed it on to you?

A. To me.

3364 Q. Did you receive any shipping orders that were not checked by Mr. Gatow?

A. No.

Q. Now, will you please look at the front side of the shipping order at the item marked Shipping date, is there a date inserted after that item in the exhibit which you hold in your hand?

Mr. Cohen: Objected to upon the ground that the printed form only was offered in evidence.

Question withdrawn.

Q. On the shipping order which you have in your
3365 hand, Exhibit R1001 do you find an item shipping date?

A. Yes, sir.

Q. When you received the shipping orders from Gatow checked by him what was inserted after the words shipping date?

A. Nothing. He didn't check that part.

Q. What was inserted after the words shipping date?

Mr. Cohen: Objected to, immaterial, irrelevant; the witness has testified that when she received the paper checked by Mr. Gatow she would make her entry and after that she kept
3366 no record of it.

Mr. Wolf: I do not know whether the date was entered there before or after she entered it in the books and I am going to bring that out.

Overruled.

Question read.

Mr. Cohen: I further object upon the ground that there is no time stated in the question so as to indicate whether or not the insertion appeared at the time of the receipt of the blank by the witness or subsequently.

Objection sustained.

Q. When you received the shipping orders marked Exhibit R1001 what was inserted after the words shipping date? 3367

A. It was blank.

Q. When, if at all would the date be filled in?

A. When the goods were shipped.

Q. And who filled that in?

A. I don't remember just who filled that in after the charge date, after it left me, I never kept track of it.

Q. Do you know whether or not any entry was made in the books after the shipping date was filled in on the shipping orders?

Mr. Cohen: Objected to upon the ground that the witness has already testified that she made no entry in any book and kept no track. 3368

Objection overruled.

Question read.

A. No, there were no entries made after the shipping date was filled in.

Q. The first word on the left hand corner of the shipping order is the word number, what would be figures opposite that word indicate?

A. The number of the case to be shipped.

Mr. Wolf: I now renew my offer of Exhibit R905 for identification in evidence, and I want to call your Honor's attention to a fact that may have escaped you. Miss Walsh has testified that from day to day as she made these entries in this book she sent a duplicate of it to Mr. Dockendorff. 3369

The Master: I understand that, Mr. Wolf, but the question in my mind is what relevancy a record of the orders received without regard to whether or not the goods were ever shipped on these orders has.

3370 Mr. Wolf: It seems to me that it is just the same as if we called upon Doekendorff to produce his papers.

Master: Even those would have to be relevant to be received.

Mr. Wolf: They are relevant as purporting to show the orders received.

Master: For what purpose?

Mr. Wolf: There has been a great deal of testimony with respect to the amount of goods disposed of in the gray by the Schwab-Kepner Company and as bearing upon that testimony and upon the issue we desire to

3371 have the statistics before you so that you can tell exactly the quantity of goods which the Schwab-Kepner Company either did or desired to dispose of in the gray for the four months preceding the bankruptcy.

Master: I do not see the object of merely showing the orders entered on their books, Mr. Wolf. I understand that you want to show the amount of goods in gray they sold in that time, but I cannot see what relevancy the record of the orders on their books, particularly in view of the testimony that sometimes orders were entered when there was

3372 no order, can have. Mr. Kepner testified that he could charge these goods whenever he wanted to without any order.

Mr. Wolf: That didn't apply generally, except to those two or three concerns.

Master: I cannot see what bearing the mere record of the orders has.

Objection sustained.

Sworn to before me this 3rd day of May, 1911.

PHILIP S. SUFFERN, recalled. 3373

Examination by Mr. Wolf:

Mr. Wolf: I call upon Mr. Dockendorff to produce the original bills of lading and customers' receipts covering invoices beginning with #1 in the second series of numbers and up to 3030 and the invoices covering the items on pages 10 to 15 of the original report of Suffern & Son, dated February 21st, 1911.

Mr. Cohen: I understand, Mr. Referee, that we have delivered to the accountants all of the bills of lading that they have requested from time to time and I also understand that the accountants have brought them here to-day. 3374

Offered in evidence.

There being no objection the bills of lading are received in evidence and considered Exhibit R1002.

Q. Mr. Suffern, you have examined Exhibit R1002?

A. Yes, sir, I have.

Q. Will you please state what those documents are?

A. They are original bills of lading and customers' receipts covering the majority of invoices numbered 1 to 3030 in the second series of numbers and most of the invoices on pages 10 to 15 of our report of February 21st, 1911. The list is not complete. 3375

Q. Why didn't you have all of the invoices shown on pages 10 to 15 of your report dated February 21st, 1911?

A. I understood that they were not procurable.

Q. You have examined those that Mr. Docken-

3376 dorff has produced and they do not cover all those referred to on these pages of your report?

A. That is right.

Q. Now, you say these are bills of lading and customers' receipts covering the majority of invoices beginning with 1 in the second series up to 7050—what do these numbers indicate?

A. These numbers are the numbers of the assigned accounts to Beckendorff that we use as the invoice numbers in our report of February 21st.

Q. Now, will you please state the result of your examination of the bills of lading and customers' receipts with respect to the date of shipment, the
3377 receipt of the goods and state any changes that would have to be made based upon the shipments, date of shipment and receipt of the goods by the customers in your original report.

Mr. Cohen: If this is all contained in the supplemental report submitted to us, we are willing, subject to the same conditions as before that it go in as the direct testimony of this witness, subject to cross examination in detail, the theories of the computation or the basis of the report not being binding upon Mr. Beckendorff.

3378 Received in evidence and marked Exhibit Rimes, May 2nd, 1911.

Cross examination by Mr. Cohen:

Q. Mr. Suffern, referring to Exhibit Rimes, which is your supplemental report to Mr. Wolf dated May 2nd, 1911, have you prepared schedules of the items which you state in totals in that report?

A. I have supporting figures for all of these items but not prepared in schedule form.

Q. You mean that they are in memorandum form but not typewritten?

A. That is right.

Q. You have no objection, I assume, to our 3379
accountant examining these supporting figures at
any time?

A. No, sir, we have not.

Q. Now, this revised report revises your orig-
inal report to the extent of the revision of the
date of shipment, does it not?

A. As to the date and character of the ship-
ments.

Q. And to what extent did you use the bills
of lading in revising your original report, that
are called Exhibit [1102]?

A. The revision as shown in [1103] was made
up solely of information obtained in the papers 3380
of [1102].

Q. What information did you get from the
papers [1102]?

A. The date that is entered on the bill of lading
or the receipt.

Q. Now, then, that shows what you thereafter
treated as the date of shipment?

A. As the date used.

Q. As the date used of shipment, did you make
any effort to ascertain what merchandise, if any,
was in storage warehouses prior to the shipments
covered by the bills of lading in [1102]?

A. No reference was made to any other papers 3381
for the revision other than [1102].

Q. I understand that no reference is made to
papers—

A. Or records.

Q. You made no inquiry or investigation to
determine whether or not any of the merchandise
covered by any of these bills of lading were in
storage warehouses prior to the dates shown by
the bills of lading?

A. No investigation of that kind was made.

Q. Nor did you make any investigation to ascer-

3382 tain whether or not any of the merchandise covered by these bills of lading had been set apart at the bleacheries and held for the account of customers?

A. That is correct.

Q. That is you made no such investigation?

A. Yes, we made no such investigation.

Q. So it is true, is it not, that your present compilation rests upon the assumption that the date of shipment of the merchandise to the customer was the same as appears upon the bills of lading?

A. Bills of lading and receipts, yes, sir.

3383 Q. And regardless of whether or not any other circumstances existed by which the merchandise was transferred to the customer after the date of the actual shipment?

A. Yes, sir, regardless of any other circumstances.

Q. And regardless of whether Deckendorff held any warehouse receipts for the merchandise before it was actually shipped to the customer?

A. Yes, sir.

Q. Were you ever acquainted with the fact that there were instances of considerable number where the accounts assigned to Deckendorff were

3384 accompanied by warehouse receipts covering merchandise held to be shipped to the customer on request of the customer?

A. I don't recall that information.

Q. Do you understand my question?

A. I should like to have it read again.

Q. Perhaps I can put it in a clearer form, assume a set of facts like this an order for goods, the packing of the goods, putting them in the cases, the making of the account against the customer by direction of the customer, the withholding of the shipments but the storing of the goods in the

storage warehouses with the storage receipts and 3385
the assignments of the accounts turned over to Deckendorff—was your attention called to the fact that there were situations of that kind between the parties?

Mr. Wolf: Objected to.

Q. Any such situation?

A. I don't recall having heard or having had my attention called to such circumstances or situation existing.

Q. And you never read anything of that sort in the testimony taken here, did you?

A. I can't recall whether I read that or not. 3386

Q. Was your attention ever called to the fact that goods covered by invoices assigned to Deckendorff were set apart in certain instances at the bleacheries?

Mr. Wolf: Objected to on the ground that it assumes that that was the fact.

Objection overruled.

A. I understand your question to be was my attention called to the fact?

Q. Yes.

A. I don't think that my attention was called to that as a fact.

Q. Would you as an expert accountant say that 3387
for comparative purposes your schedules would be affected if it should transpire that the bills of lading date of shipment was later than the date of deposit of goods in the warehouse with the warehouse receipts accompanying the assignment of the accounts and was later in some instances than the setting apart of the goods at the bleacheries?

Mr. Wolf: Objected to upon the ground

3388 that it calls for the conclusion of the witness, a conclusion of law. The witness has presented a compilation of figures in this Exhibit in evidence and any legal change of those figures by other facts would be a conclusion of the witness.

Mr. Glen: That is not within the scope of this cross examination. The accountant had made his figures and whether he would have made a different set of figures is a question of law. The whole scope of the examination it seems to me is what he did do, not what he would have done.

3389 Master: I think Mr. Cohen is entitled to have his opinion on that as an accountant.

Objection overruled.

A. I don't think that the circumstances related in the question would affect the changes made in this report of May 2nd, the changes made in the report of February 21st by the report of May 2nd.

Q. That doesn't answer my question, Mr. Witness, will you please hear it again?

A. I think I recall the question. I think that
3390 as a comparative statement showing the dates on which the bills of lading were actually sent for the goods in the warehouse and the warehouse receipts shipped to Dockendorff would be of comparative value.

Q. Have you any notion today of why you made a comparative statement showing the date of shipment of the merchandise as compared with the date when the invoice was assigned?

A. Yes, sir. The direct reason was that it was desired by counsel for the Trustee.

Q. You had no other reason but that? 3391
A. That was the reason that influenced me in preparing such a statement.
Q. Did you understand what purpose he desired it for?

Mr. Wolf: Objected to.
Objection sustained.

Sworn to before me this 3rd day of May, 1911.

Recess Taken.

3392

After Recess.

FREDERICK HEENE, sworn.

Examination by Mr. Wolf:

Q. Mr. Heene, prior to the first of December, 1910, what was your business?
A. I was employed in the Schwab-Kepner Company as assistant to Mr. Corbett, the Secretary of the company.
Q. How long had you been employed by the Schwab-Kepner Company?
A. Eighteen months.
Q. Prior to December 1st, 1910? 3393
A. Yes.
Q. In the same position?
A. Same position.
Q. Mr. Corbett was the Secretary and Treasurer of the company?
A. Yes, sir.
Q. Mr. Heene, what was the course of business of the Schwab-Kepner Company with respect to the invoices received from the mills as to entry in the books?
A. The mill invoices would come in and be

3394 passed over to me and I would deduct same from the contract.

Q. First the invoice would be received in the mail, generally?

A. Yes, Mr. Kepner would receive the mill invoices.

Q. And hand them to you?

A. Yes.

Q. What would you do?

A. Deduct them first from the contract, second enter them into the stock book and then make disposition of it, either send it to the bleachery or sell in the gray.

3395 Q You say you would look over the invoice and deduct it from the contract?

A Yes.

Q Explain what you mean by that?

A The contract would read for some amount, say 5,000 pieces to be delivered 100 pieces weekly. I would charge the amount of the invoice against that 5,000 pieces, against the contract.

Q. If the Schwab-Kepner Company had a contract say with Woodward, Baldwin & Company to deliver so many pieces of a certain quality every week then you would deduct the amount of that particular invoice from the gross amount

3396 required to be delivered to the Schwab-Kepner Company by Woodward & Baldwin?

A Exactly, yes.

Q What record would you make of that in any book?

A. We had a gray stock book.

Q. Is this book that I now show you the so called gray stock book to which you refer?

A. It is.

Marked Exhibit R1004 for identification. May 3rd, 1911.

Q. Did you, yourself, make the entries in this gray stock book or did someone else? 3397

A. I believe four or five different people made the entries.

Q. Look at it and tell me who made the entries in that book?

A. A young lady by the name of Rubleman first, Miss Hardy, Miss Zeisloft, Mr. Gatow and myself.

Q. Under whose supervision were the entries in the gray stock book marked Exhibit R1004 for identification made?

A. Well, for about four months prior to the failure under my supervision. 3398

Q. And prior to that under whose supervision?

A. Mr. Corbett's.

Q. Now, you deducted, to come back to the invoice, you deducted you say the amount of the invoice from the contract that you had with the mill?

A. Just the number of pieces.

Q. What would be the next thing that you did?

A. Enter them in the gray stock book.

Q. Then what was the next thing that you did?

A. Ordered them shipped from the mill and make out an invoice to the bleachery converting the goods. 3399

Q. Next?

A. Give them to Mr. Barlow to enter into the purchase ledger.

Q. You mean the invoices were given to Mr. Barlow?

A. Yes.

Q. Did you give the invoices to Mr. Barlow prior to your checking the price and the quantity or subsequent to your checking the price?

A. No, sir, I checked the prices and quantities first.

3400 Q. You then handed, after checking it in that way, the invoice over to Mr. Barlow?

A. If the goods were to be converted I would order them shipped to the bleachery and on the same day Mr. Barlow would get it.

Q. Wait a moment, I am coming back to that in a minute. After checking the invoice for price and quantity you passed the invoice over to Mr. Barlow?

A. I wouldn't say that happened all the time.

Q. I am talking generally. That was the general course of business?

A. In the general course, yes, it was turned
3401 over to Mr. Barlow.

Q. Before you turned the invoice over to Mr. Barlow did it sometimes happen that the goods had already been shipped from the mills to the bleachery?

A. Yes.

Q. And sometimes it happened that the goods had not been shipped from the mills to the bleachery?

A. Correct.

Q. What would you do in the instances where the goods had not been shipped by the mills to the bleachery?

3402 A. Order them shipped.

Q. Who would attend to that?

A. I would tend to that.

Q. What instructions did you give the mills?

A. To ship to any bleachery we wanted the goods to go to.

Q. What did you do with the invoice after that?

A. The mill invoice?

Q. Yes, did you turn that over to Mr. Barlow?

A. Yes, sir.

Q. It is a fact then that you did not turn over 3403
the invoices to Mr. Barlow until you had given shipping instructions to the mills or unless the mills had already shipped the goods?

Mr. Cohen: Objected to, leading.
Objection sustained.

Q. What disposition was made by you of the goods at the mills before you handed the invoices over to Mr. Barlow?

Question withdrawn.

Q. Before passing the mill invoices over to Mr. Barlow what, if any disposition, did you make 3404
of the goods at the mill?

A. If they were to be shipped to the bleachery for converting they would be ordered to the bleachery and in some instances the bills would be held by Mr. Kepner and by him sold in the grey if we couldn't use the goods in the finished product.

Q. Did you ever pass any of the invoices over to Mr. Barlow for entry in the books until you had given instructions to the mill to ship the goods or unless the mills had already shipped the goods?

A. No, Mr. Barlow would get them—in some in- 3405
stances Mr. Kepner held the invoices and Mr. Barlow didn't get them until possibly two or three days later.

Q. I am talking about the time when they were handed to Mr. Barlow, when Mr. Barlow received the invoices for entry in the books what disposition had been made at that time of the goods at the mills?

Mr. Cohen: Objected to.

Q. What orders had been issued?
A. A shipping order would go to the mill.

3406 By the Referee:

Q. Was that true of every invoice?

A. Unless the goods were to be sold in the gray the shipping order would go to the mill to be shipped to the bleachery.

Q. And if the goods were sold in the gray there would be no shipping order?

A. In a number of instances the goods were sold in the gray and the goods would be held and the shipping order would not go to the mill.

Q. What did you do with the invoice after you entered it in the books?

3407 A. Filed it away.

By Mr. Wolf:

Q. What the Referee wants to know is what disposition would you make of the goods sold in the gray?

A. A shipping order would go to the mill and the goods would be shipped any place the customer wanted them.

Q. And would the invoice go to Mr. Barlow for entry into the books until shipping orders had been sent to the mill?

A. Why, I believe in nearly every case the
3408 disposition was made of the invoice.

Q. I don't believe that is particularly clear.

By the Master.

Q. What do you mean by disposition?

A. The goods were disposed of in some way or another.

Q. What do you mean by that?

A. In some instances we held the invoice without making any disposition whatever but the invoice was given to Mr. Barlow to enter in the purchase ledger and then given back to me or

Mr. Kepner and he would hold it until he got 3409
an order to sell the goods in the gray.

Q. That is one disposition and another disposition, as I understand your testimony was that you would send shipping orders to the mills?

A. Yes.

Q. That is two methods, were there any other methods?

A. No, those are the only two.

Q. So that all of these invoices were disposed of in one of those two ways?

A. Yes, they would either be sold in gray or shipped to the bleacheries.

By Mr. Wolf: 3410

Q. Now, the goods sold in the gray, what records would there be made of that?

A. The goods sold in the gray on the mill invoice the customer's charge number would be put on and the disposition marked in the gray stock book.

Q. For instance—take these invoices which I hold in my hand and point out what you mean.

A. It would be written down here on the disposition line, order number so and so and charge number so and so. In this case the goods went to the Sales Bleachery, lot No. 280.

Q. Who put this rubber stamp on here? 3411

A. I did.

Q. That is a four line rubber stamp?

A. Yes, sir.

Mr. Wolf: I offer that rubber stamp in evidence as the form stamped on the invoices.

Cross examination by Mr. Cohen:

Q. Was that rubber stamp under your charge?

A. Yes.

3412 Q. Did you stamp in Mr. Barlow's name?

A. No, sir.

Q. Who did?

A. Mr. Barlow.

Q. Opposite disposition did you write in what appears on these invoices?

A. In a number of cases, I did, yes. In this case I did not.

Q. When you did it, that meant that the goods were ordered by a certain customer?

A. No, in that case they went to the bleachery.

Q. Now, suppose the customer ordered some goods and it was put in the order book, what
3413 entry would appear?

A. If the goods were charged to a customer?

Q. Yes.

A. The customer's order number.

Q. And you would put that in there simultaneously with the entering of the order in the order book?

A. No, the order would first be put in the order book and then the shipping order made out from the mill to the bleachery and on the back on the shipping order the goods would be charged and that would be marked on the invoice.

Q. So it was marked on the invoice at the time
3414 the directions were given to the mill?

A. Yes, sir.

The four line form reads as follows:

1st line "Deducted from contract .....

2nd line "Entered in stock .....

3rd line "Entered in purchase .....

4th line "Disposition .....

There being no objection, received in evidence.

By Mr. Wolf:

Q. Did the contract have certain numbers?

A. Each contract had a certain number, yes.

Q. So on that top line, "Deducted from con- 3415
tract," you would enter a certain number?

A. Yes.

Q. And opposite the line, "Entered in stock," you would put the folio of the stock book?

A. Yes, sir.

Q. And opposite "Entered in purchase," Mr. Barlow stamped his name "Charles G. Barlow?"

A. Yes, sir.

Q. And opposite disposition you wrote the words or figures indicating the disposition?

A. Yes.

Q. Now, when goods were sold in the gray at the mills, will you please testify what records 3416
were made by the Schwab-Kepner Company of the disposition of the goods?

A. Goods sold in the gray?

Q. Yes.

A. It would be marked on the invoice and I stated the order number or charge number.

Q. That is, the charge number of the customer?

A. Yes.

Q. When you ordered out goods from the mills on the invoices that they had rendered was that generally done in writing?

A. Typewritten on the shipping order.

Q. The shipping order to the mill? 3417

A. To the mill.

Q. And those typewritten shipping orders to the mills either ordered out the goods to the bleachery or to the purchaser of the goods in gray?

A. Yes.

Q. Did you keep a duplicate record of the order to the mills?

A. We did.

3118 Q. What was done with the duplicate record?

A. Put on a file.

Q. An open file?

A. Open file.

Q. And how long were they retained?

A. Till the goods were shipped from the mill.

Q. And how would you know whether or not they were shipped from the mill?

A. From the bill of lading from the mill.

Q. And after you received the bill of lading from the mill, what would you do with the shipping order to the mill which you thus kept on open file?

3119 A. They would be marked shipped and the date and then filed.

Q. Do you know what became of the original bills of lading?

A. They went through so many hands, I don't know.

Q. Do you know what the general course of business of the Schwab-Kepner Company was with respect to ordering the goods from the bleacheries to the customers?

A. Through shipping orders.

Q. I show you a shipping order that has been marked Exhibit R1001, is that the form sent to
3120 the bleacheries to order out goods to customers?

A. The bottom was a blank sheet, these items down here did not appear on the original.

Q. On the original that went to the bleachery?

A. No.

Q. In other words, it ended at number, pieces, etc.?

A. Yes.

Q. So that the instructions to the bleachery had the following items filled in—the number in the upper left-hand corner?

A. Yes.

Q. Directions to whom to ship?
A. Yes.
Q. The order number?
A. Yes.
Q. And prepaid, collect and value?
A. Yes.
Q. Case number, prices, shades, style and file number?
A. Yes, sir.
Q. And stopped there?
A. Yes, sir.
Q. Now, can you tell what the general course of business was with respect to filling in the other blanks appearing on this exhibit?
A. The lower blanks on the front side there?
Q. Yes.
A. Well, in doubtful cases the amount that the consignee owed would be put in there.
Q. What do you mean by doubtful cases?
A. Regarding credit.
Q. And then the shipment would be O. K. by W. A. Corbett?
A. Yes.
Q. Who filled in the shipping date?
A. That was done in the order department.
Q. Who had charge of that?
A. Mr. Victor.
Q. Anybody else?
A. No.
Q. Was he in charge of that department?
A. He was.

By Mr. Cohen:

Q. Did your department have any particular name?
A. No, I can't say that it did have.
Q. Did you engage any of these young ladies?
A. No, sir.

3424 Q. Did you tell them from day to day what entries to make in the book?

A. The invoices I got, yes, or I made them myself in many cases.

Q. Did you check up their work at any time?

A. Yes.

Q. Did you do that regularly?

A. Regularly.

Q. What do you understand by checking up?

A. If the goods were to be disposed of and an invoice was made out to the bleachery I would check that invoice from the mill invoice.

Q. How would you check up the entries in the
3425 books?

A. I can't say that they were checked up very often.

Q. Were they ever checked up?

A. They were, yes.

Q. Not regularly?

A. Not regularly.

Q. Did you ever study bookkeeping?

A. No, sir.

Q. Did you ever balance your stock book with an actual inventory?

A. This stock book?

Q. Yes.

3426 A. No, sir.

Q. You testified with reference to goods shipped to the bleacheries from the mills and goods shipped to customers; did you ever hear of any being shipped to warehouses?

A. Finished goods, yes.

Q. What records did you keep of that?

A. I kept no record of it. In that case the goods were simply billed and held for a customer.

Q. Did you ever send any shipping instructions to the mills to hold goods for customers?

A. No, sir.

Q. Were goods in any instance sold to customers shipped from the mills to the customers? 3427

A. Yes, sir.

Q. You are sure of that?

A. That is, they were shipped to the bleachery for the account of a customer. If goods were ordered by a customer to be shipped to a certain bleachery for their account we would notify the mill to ship to that bleachery.

Q. To be converted at the bleachery?

A. At any bleachery the customer wished the goods to be shipped to, yes.

Q. Did you keep any book containing any record of the actual shipment of the merchandise 3428 from the mills?

A. No.

Q. When you received an invoice from the mills your first step was to find the contract against which that invoice was to be charged?

A. Yes.

Q. And those were the goods in the gray?

A. Goods in gray.

Q. Who had charge of the filing of those contracts?

A. I kept the contract files.

Q. Who determined when the goods were to be shipped from the mills?

A. To the bleacheries? 3429

Q. Anywhere?

A. If we needed a certain construction to be finished into a finished product I would order the goods shipped to the bleachery that finished that style of goods.

Q. Would you determine that on your own responsibility?

A. Mr. Kepner did and later on I kept a supplies sheet, the styles we were short on.

3430 Q. What do you mean?

A. The different constructions of cloth, only a certain construction could be finished a certain style and if I was short and we got an invoice of that construction from the mill I would order the goods to the bleachery that finished the style we wanted.

Q. What would determine the style you wanted?

A. The surplus sheet I had from which I deducted the sales each day and which showed just what we were short of styles.

Q. You don't mean the surplus sheet deter-
3431 mined it, it was according to the orders you received?

A. Yes.

Q. And you would order the goods out in order to meet the orders of your customers?

A. Yes.

Q. That was the general course of business?

A. Yes.

Q. And that was part of your job to watch the accounts with the bleacheries and see that there was enough goods there to fill the orders?

A. Yes.

Q. And if an invoice came in you would de-
3432 termine whether there was enough goods to meet the order and according to that determination would send instructions to the mills?

A. Correct.

Q. And that was the general course of business down to the time of the failure?

A. Possibly two weeks before the surplus cards were dropped, two weeks prior.

Q. You didn't keep up the surplus cards?

A. No.

Q. You stopped keeping them about two weeks prior to the failure?

A. Yes.

Q. But up to that time the business retained 3433
its usual course, which you have testified to?

A. These surplus cards were only started about three months prior.

Q. But the course of business for that three months was as you have described it?

A. Yes.

Q. Now, did you say that goods were sold in gray from the mills at any time?

A. Oh, yes.

Q. And were those goods sold to houses doing the same general class of business as the Schwab-Kepner Company?

A. I don't know. I had nothing to do with the 3434
sales department. Mr. Victor had charge of that.

Q. But you knew the names of those people?

A. Some of them.

Q. When goods were sold in the gray at the mills, would the names of the customers appear in the directions given to the mills?

A. If the customers wanted the goods shipped to a certain bleachery no, I don't believe the customer's name appeared on the original shipping order because it wasn't necessary for the mills to know what customers were getting charged with the goods.

Q. They were goods shipped to the bleacheries 3435
and sold at the bleacheries in gray?

A. No, right to the bleachery. The customer would buy the goods and order them shipped to the bleachery and held there for their account and the customers could—

Q. If they were sent to the bleachery for a particular customer would the name not have to appear of the customer?

A. I don't know much about that.

Q. You don't know anything about that?

A. No, sir.

3436 Q. What, precisely, did you understand when you were testifying on direct examination that goods were sold in the gray from the mills?

A. I know that goods from the mills for which we held the invoices were sold in the gray.

Q. Directions had to be given in those cases before the goods left the mill?

A. Yes.

Q. Would you have charge of that?

A. No, sir.

Q. So you have no means of knowing what directions were given to the mills?

A. No, that was in the sales department.

3437 Q. And of course you kept no record of such sales?

A. Just what I know about is the goods shipped from the mills to our bleacheries to be converted into finished goods.

Q. And that is all you do know about?

A. That is all I know.

Q. You said something, however, about invoices kept by Mr. Kepner sometimes?

A. Yes.

Q. What invoices would Mr. Kepner keep?

A. He would open the mail and get the mill invoices and he could see at a glance certain construc-

3438 tions that he could sell in the gray.

Q. Did you ever assist him in doing that?

A. No, sir.

Q. How do you know what you have just testified to?

A. I know that he would give me the invoices and say, "Enter it up, I have sold it," and I would simply deduct it from the contract and enter it in the gray book and it would then go to the sales department and they would charge up the goods to the customer.

Q. Now, you said on your direct examination

that the goods would be sold in the gray if you 3439
couldn't use the goods in the finished product?

A. Why, we would always give preference to the goods being finished, if we had orders for them we finished them rather than sell in the gray.

Q. Was that always so?

A. I don't know. In some instances, as I said, Mr. Kepner would have the invoices and if he had an order for it in the gray he would charge it up.

Q. But was it usually so that you first endeavored to fill the demands of the bleacheries before selling the goods in the gray, to fill the demands upon the bleacheries of your customers? 3440

A. I would notify Mr. Kepner if we were short of any style and he would write to the mill and hurry an invoice on a certain construction and that invoice he would turn over to me to have sent to the bleachery to finish into the style we wanted.

Q. Now, who received the contracts in the first instance when they were made with the mills?

A. Mr. Kepner would receive a sale note from the brokers.

Q. What would become of that sale note?

A. Mr. Kepner would O. K. it and turn it over to me.

Q. What would you do? 3441

A. Put it in the contract book, give it a number and make out the contract card, and exact duplicate of the sale note.

Q. And against that contract number you would charge the goods as shown by the invoices which you received?

A. Yes.

Q. Are you now testifying to the usual course of business as you did on your direct examination?

A. Yes.

3442 Q. Then the books which you kept and the cards which you kept constituted a record of the purchases of goods from the mills?

A. Yes.

Q. Less the amount charged to the Schwab Kepner Company by the invoices which you received?

A. Yes.

Q. But they would not show the actual amount of goods shipped from the mills?

A. No, it would not.

Q. And the surplus cards which you kept would show the records of goods received at the bleacheries less the amount of orders for that style of

3443 goods?

A. It wouldn't show just what was on hand at the bleacheries. I simply took the stock on hand at the bleacheries of the styles we had and deducted the orders from that and each day as so many bales of gray goods went to the bleachery to be finished I would add that on to that amount.

Q. And those surplus cards then would show not the actual amount of goods at the bleacheries, but what would be the balance if all those orders were filled?

A. Yes.

3444 Q. And that was to guide you for the purpose of determining what quantities to send to the bleacheries to fill the orders for that particular stock?

A. Yes, sir, exactly.

Q. Now, is there any book that you had that kept a record of the daily shipments from the mills to the bleacheries?

A. No book, just the shipping orders.

Q. The shipping orders would be the only things that would show that?

A. Yes.

Q. And the shipping orders would show that an order had been sent to the mills to ship the goods? 3445

A. Yes.

Q. And you assumed for the purposes of your records that when the orders were given to the mills then the goods would be shipped?

A. Yes.

Q. But whether or not the goods were actually shipped you would not know, would you?

A. We would know, we would get the bill of lading or notice of the shipment from the mill.

Q. Until you got the bill of lading from the mill you wouldn't know that the goods had left the mill, would you?

A. No, I would not. 3446

Q. Now, at what point was the invoice received from the mill turned over to Mr. Barlow for entry?

A. At what time?

Q. At what point in the transaction; was it before or after the shipping instructions had been sent to the mills?

A. In many instances Mr. Barlow would get the invoices on the same day that the shipping order left the house and went to the mill.

Q. How about the other instances?

A. I don't know; about six months prior to the failure I kept the invoices and did not turn them over to Barlow until the goods were actually shipped. 3447

Q. That was six months prior to the failure?

A. I wouldn't say exactly, around that time.

Q. And then after that the system changed?

A. Yes.

Q. And did it change in this respect, that you turned the invoices over to Barlow before you got the bills of lading from the mills?

A. Yes.

Q. And did you turn them over in some in-

3448 stances before the shipping instructions were sent to the mills?

A. Yes, sir.

Q. So that Barlow would get the invoices sometimes before the shipping directions were sent to the mills?

A. Yes, sir, those were a few cases.

Q. And sometimes he would get them—in some cases he would get them after the shipping orders were sent?

A. Yes.

Q. Now, when the bills of lading would come in what disposition would be made of the bills of
3449 lading?

A. When the goods were shipped to the bleacheries for our account? The bills of lading would come in and the shipping order would be marked shipped such and such a date and the bills of lading would be filed away with the exception of shipments made to the Sales Bleachery and in those the bills of lading went to the Sales Bleachery.

Q. But I think you testified that no record would be kept of the merchandise covered by such bills of lading?

3450 A. The record would be kept on the shipping order, it would be marked shipped.

Q. But not in any book?

A. Not the goods shipped from the mills to the bleacheries for our account, but the goods shipped to customers a record was kept of.

Q. Where was that kept?

A. By Miss Zeisloft.

Q. Where?

A. In her desk.

Q. In any book?

A. Yes.

Q. What book?

3451

A. A black leather covered book.

Q. So there is a record of the actual goods shipped from the mills to customers direct?

A. Oh, yes.

Q. Those goods shipped from the mills to the customers direct were the goods in gray?

A. Yes.

Q. What became of the bills of lading for those goods?

A. They were first given to Miss Walsh.

Q. What would she do with them?

A. I don't know.

Q. Did you have supervision of that book?

3452

A. No, sir.

Q. Who had?

A. Miss Zeisloft.

Q. Under anybody else?

A. No, she had sole charge.

Q. Do you know the names of any people to whom goods were sold in gray?

A. Of course, I couldn't help but know a few of them that would come in.

Q. Can you give us some of the names?

A. D. O. Tatum, Harris Company, Ferguson-McKinney Company, Freedman & Rabinowitz, those I am positive of.

3453

Q. Of course you don't know what arrangements your employer had with those people?

A. No, those simply originated in the sales department.

Q. You had no connection with them at all?

A. No connection.

Q. When the bills of lading came in for goods in the gray who gave the bills of lading to Miss Walsh?

A. Mr. Kepner would open the mail and the mail that came in would be given the different departments to whom it belonged.

3454 Q. You used the expression in your direct examination "goods billed and held," what did you mean by that?

A. Goods billed and held for future delivery to the customer.

Q. Held where?

A. At the mill.

Q. Were those goods in the gray?

A. If the goods were gray goods that the customer bought.

Q. How would that be indicated to the mills by any direction of the Schwab-Kepner Company?

A. I know in some instances releases were sent.

3455 Q. What do you mean by that?

A. To release for the account of a certain party.

Q. And they would give the name of the customer?

A. Yes, sir.

Q. That is to say, if the goods were sold to D. O. Tatum or Ferguson-McKinney the release would indicate the name of the purchaser?

A. Yes.

Q. And they would go direct to the mill?

A. Yes.

Q. And they would hold the goods until receiving instructions to ship them to the persons

3456 named?

A. Yes, sir. After that we had nothing more to do with the goods.

Q. That is what you meant when you said goods billed and held?

A. Yes.

Q. But such goods when you received the invoices would be entered up in your books would it not?

A. The disposition?

Q. No, when the invoices came in?

A. Yes, they would be entered in the gray stock book.

Q. Although the goods would still remain at the mill? 3457

A. Oh, yes.

Q. So that the gray stock book doesn't indicate the goods the Schwab-Kepner had actually received from the mills but only indicates the goods for which the Schwab-Kepner Company had received invoices, isn't that true?

A. Yes.

Q. You have been asked questions with the phrase, "the usual and ordinary course of business," you understand what those words mean, do you?

A. Usual course of business?

Q. Yes. 3458

A. Yes, I do.

Q. What do you understand by them?

A. The routine that is followed out.

Q. Regularly?

A. Yes.

Q. As a part of the regular course of business?

A. Yes.

Q. And you endeavored when you were testifying in answer to the questions of Mr. Wolf to give the regular routine of the business?

A. What I knew of it, yes.

A. And the same in answer to my questions? 3459

A. Yes.

Q. And so far as there were exceptions to that general routine you have endeavored to state them, have you?

A. I have.

Q. Was any record kept of the goods at the place of business of the Schwab-Kepner Company?

A. Any record of what?

Q. The goods received at the Leonard Street place?

A. Why, I believe the shipping clerk in the base-

3460 ment had charge of the incoming goods, kept a book in which he entered the receipts from the bleacheries.

Q. You didn't have charge of that?

A. No.

Q. That wasn't kept in your department?

A. No.

Q. So that you never attempted to keep a book which would show the exact quantity of merchandise which the Schwab-Kepner Company had on hand at any particular date?

A. At Leonard Street?

Q. Yes.

3461 A. No.

Q. Or at any other place?

A. No.

Q. Your job was to keep track of the contracts, check up the invoices with the contracts and follow out the quantities at the bleacheries and give the orders to the mills of what goods to ship to bleacheries, is that right?

Q. Yes. In a number of instances Mr. Corbett did the same thing.

Q. You didn't always do it yourself?

A. No.

Q. You or Mr. Corbett always did?

3462 A. Yes, with the exception of the goods sold in the gray. That would originate in the sales department.

Q. How long had you been there?

A. About eighteen months.

Q. Was there any difference in the method of doing business during those eighteen months?

A. Well, in the beginning we didn't have the case cards or the contract cards.

Q. Outside of that it was about the same?

A. Yes.

Q. You had the sales department just the same as you had later? 3463

A. Yes, sir.

Q. You ordered the goods from the bleacheries in the same way?

A. Yes.

Q. And the sales of goods in the gray were made in the same way?

A. Yes, sir.

Q. And with exception of the changes in bookkeeping the business ran in the same usual and ordinary course of business?

A. Yes, sir.

By Mr. Wolf: 3464

Q. Were the entries made in the books, so far as you know, made correctly?

A. Entries of what?

Q. The entries made under your supervision in the books and made by you in the gray stock book, were they correctly made?

A. Oh, yes. The mill invoices would come in and if I didn't have time I would give it to one of the girls and she would enter it up.

Q. And the notations made by you on the invoices were they correctly made?

A. I believe so.

Q. Mr. Cohen interrogated you as to whether or not you were familiar with the fact that finished goods were sent to the warehouses, do you know whether or not the finished goods at the warehouses came from the mills or from the bleacheries? 3465

A. From the bleacheries.

Q. Did any goods come from the mills to the warehouses?

A. I don't know that.

3466 Q. You testified that the goods in gray were ordered out by Mr. Victor in the sales department?

A. Goods in gray sold to customers.

Q. He ordered them from the mills?

A. Yes.

Q. Did you receive invoices for the goods in gray ordered out from the mills by Mr. Victor?

A. Why, I would get the invoice and if the goods were to be sold in the gray Mr. Kepner would have on the invoice sold in gray and that invoice would go to Mr. Victor who would have one of his girls make out the shipping order.

Q. And when would you get the invoice and
3467 pass it to Barlow?

A. Mr. Victor would then have the goods charged on the shipping order, then it would come to Mr. Gatow, who would check the shipping order, that is, for charge for extensions, etc.; when he was through with it he would put on the disposition and I would get it back and give it to Barlow.

Q. So that you only got the invoice back and handed it over to Barlow when it had gone through that routine?

A. Yes.

Q. You testified that in a few instances you turned over the invoices to Barlow before shipping
3468 instructions went to the mills?

A. Yes.

Q. In those instances what shipping instructions were sent to the mills and when?

A. They would probably be sent a day later, or two days later, that was in the cases where Mr. Kepner wanted to sell the goods, we couldn't use the finished goods and he wanted to sell the goods in gray and would hold it till he got an order.

Q. Were shipping instructions always sent

within a few days after the invoices were turned over to Barlow? 3469

A. Yes, as far as I remember.

Q. Mr. Cohen asked you about a change in the system. I think you testified that after six months before the receivership there was a change in the method, is that correct?

A. Regarding the invoices?

Q. Yes.

A. Yes.

Q. Which system was in vogue in the last six months, that you would or would not hand them over to Barlow at once?

A. I would pass the invoices right over to Bar- 3470
low.

Q. Without waiting for the bills of lading or only after you received them?

A. Before I received the bills of lading.

Q. You testified in answer to Mr. Cohen's question that goods in the gray were sometimes sent to customers direct from the mills and that that was entered in a book?

A. Yes, the delivery date was entered in a book.

Q. Is this the book, the book I now show you?

A. Yes, sir.

Marked Exhibit R1005 for identification, 3471
May 3rd, 1911.

Q. In whose handwriting are the entries in this book R1005?

A. Miss Zeisloft and Miss Hardy.

Q. You testified that the goods in gray sold at the mills were sometimes marked "held," in those instances did you send a release such as you testified to in your cross examination to the mill?

A. In some instances I said releases were sent.

Q. What was done in the other instances?

A. The goods were simply held at the mill await-

3472 ing the instructions of the customer. Of course, that was in Mr. Victor's department.

By Mr. Cohen:

Q. Was there any period of the year when you were busier than any other?

A. Why, I can't say that. I can't answer that. I know that we were always kept busy in the work until two weeks prior to the failure.

Mr. Wolf: I offer in evidence the two purchase journals marked Exhibits R906 and R907 for identification.

3473 Mr. Cohen: I make the same objection that I made when the books were first offered in evidence upon the ground that no proper foundation has been laid for them, that they are incompetent, immaterial and irrelevant and not binding upon Mr. Dockendorff.

Mr. Wolf: At the last hearing, Mr. Referee, you reserved decision upon the question and you said that you wanted further evidence with respect to the routine of the business and we think we have supplied that with Mr. Heene's testimony. Mr. Cohen has

3474 made a general objection without specifying the ground of his objection except in vague and most general terms and it is impossible therefore for me to answer it except in vague and general terms. It seems to me that we have proved that the entries in the purchase journal were made from the invoices and that they were passed to Mr. Barlow when the liability of the Schwab-Kepner Company was established, when the shipping instructions had been issued.

Mr. Cohen: My objection rests, among

other things upon the ground that as your 3475
Honor suggested with reference to the outgoing merchandise a record of charges made against customers is not a record of actual goods shipped; a record of charges made against the Schwab-Kepner Company is no record of goods received by the Schwab-Kepner Company and all of this testimony is to show, as I understand it, two things — the amount of goods sold in the gray and the amount of goods on hand at a particular time, for the purpose of showing the financial condition of the Schwab-Kepner Company. The witness has testified that no stock 3476
book was kept and no record kept of goods actually received and sent out, but a record was kept of the charges against the Schwab-Kepner Company, the contracts which it held and the most that can be said is that these purchase journals represent entries made after the invoices were received and after, in some instances, shipping directions were sent and some before they were sent. They furnish no information relevant to this inquiry any more than the total amount of orders received. The total amount of orders given had just about as much relevancy as 3477
the total amount received.

Master: There has been much testimony in this point that I do not recall, I am sorry to say, all the testimony about the entries in this purchase ledger.

Mr. Wolf: This witness testified, notwithstanding Mr. Cohen's emphatic statement, that in the vast majority of instances he only turned over the invoices to Barlow for entry in the purchase journal after he

3478 had issued shipping instructions to the mills that sent the goods to the bleacheries. He testified that there were a few instances where the shipping instructions went after the invoices were turned over to Barlow, but he also testified that they went within two or three days after the invoices were turned over to Barlow; there you have the course and conduct of the business, a perfectly natural and the only one you could imagine could exist. Those instructions to the mills to ship the goods, in the vast majority of instances got the goods to the
3479 bleacheries, we want to show that and we think we have shown it.

Mr. Cohen: The witness distinctly stated that the invoices were entered in the books even in those cases where the goods were held at the mill.

Mr. Wolf: He said that in those instances where the goods were held at the mills they were in the gray and a release was sent to the mills that they were held for a certain customer's account and from then on the connection of the Schwab-Kepner Company ceased because they belonged to
3480 the customer and where they weren't sent they were ordered out within a few days after the invoices were handed to Barlow. Mr. Cohen's statement of the evidence is not entirely fair.

Mr. Cohen: The character of the transactions where the releases were sent to the mills is already in evidence. The witness in giving the names of some of the customers gave us the names of D. O. Tatum and Ferguson-McKinney. As for assuming that because releases were sent to the mills that

therefore the goods were sold to customers 3481
and that the mills no longer held the goods and that for the purposes of this case the obligation of the mills was to be treated as a liability and the goods treated as assets, it is an assumption not warranted by the evidence. I have invoices that were entered in the books even in those cases where the goods were held at the mill.

Mr. Wolf: He said that in those instances where the goods were held at the mills they were in the gray and a release was sent to the mills that they were held for a certain customers' account and from then on 3482
the connection of the Schwab-Kepner Company ceased because they belonged to the customer and where they weren't sent they were ordered out within a few days after the invoices were handed to Barlow. Mr. Cohen's statement of the evidence is not entirely fair.

Mr. Cohen: The character of the transactions where the releases were sent to the mills is already in evidence. The witness in giving the names of some of the customers gave us the names of D. O. Tatum and Ferguson-McKinney. As for assuming that be- 3483
cause releases were sent to the mills that therefore the goods were sold to customers and that the mills no longer held the goods and that for the purposes of this case the obligation of the mills was to be treated as a liability and the goods treated as assets, it is an assumption not warranted by the evidence. I have followed this witness's testimony carefully and there is absolutely nothing in his testimony that sustains the

3184 proposition that these books contain a record of goods actually shipped from the mills to the Schwab-Kepner Company at any of its places of business. On the contrary, the witness has stated several times that there is no record anywhere of the goods actually shipped from the mills.

Master: The entries in these purchase ledgers made by Mr. Barlow, were made, were they, from the mill invoices after they left Mr. Heene and went to Mr. Barlow?

Mr. Wolf: Yes, sir.

3185 Master: The testimony is that these invoices do not represent shipments but that after they were received orders were given to ship or to hold, to ship to customers or hold for account of customers or ship to certain bleacheries where it was intended to be held.

Mr. Wolf: He has gone further, he has testified that the bills of lading would then come in from the mills and he checked them up and filed them away.

Master: He checked them up with the shipping orders.

3186 Mr. Wolf: With the shipping orders he had given to the mills.

Master: But they weren't checked up with these books. In other words, these books contain an entry of invoices.

Mr. Wolf: Sent by the mills which only got into the books when the shipping orders went to the mills and the evidence is that the mills carried out the orders.

Master: I did not understand this witness's testimony that way. They were entered without regard to the shipping orders.

Mr. Wolf. He said that in the vast ma-

jority of instances he only passed them over 3487
to Mr. Barlow when he had issued shipping orders to the mills. That in some instances he passed the invoices over to Mr. Barlow before, but in those instances the shipping instructions went forward within two or three days.

Master: His testimony was that during the last six months the invoices were turned over to Mr. Barlow before the shipping orders were sent. At any rate it seems to me they do not contain an entry of goods actually shipped.

Mr. Wolf: Let me make my statement 3488
clearly, the testimony of this witness was that the invoices were passed to Mr. Barlow after the shipping instructions went forward to the mills in the vast majority of instances. In some instances they were passed to Barlow before the shipping instructions went to the mills, but in those instances the instructions went forward within two or three days thereafter; that he then kept a duplicate copy of the shipping instructions to the mills and as soon as he received the bills of lading from the mills he then checked it up with the ship- 3489
ping instructions he had given to the mills and filed them away in an open cabinet.

Master: With regard to goods in gray sold to Tatum and Ferguson-McKinney Company where Mr. Kepner had orders entered in the books and where the goods were in the gray and where they never received the goods, never took the goods, those orders would appear in these books, would they not?

Mr. Wolf: I don't know, these are pur-

3130 chases, not sales, and I don't see what they have to do with these transactions at all. There are several answers to that—those are sales, not purchases, of the Schwab-Kepner Company, and secondly, they were all sales within the last month or very shortly prior to the receivership. There isn't any evidence at all that they were fictitious except by the inference drawn by Mr. Cohen from the testimony which isn't as yet backed up by the testimony of this witness who testified that he knows nothing about the sales. Mr. Cohen got him to say that goods were sold

3131 to Tatum and Ferguson-McKinney, but he testified that he didn't know anything about the sales to them at all except as the merest hearsay. Because of two isolated transactions is that any reason for throwing out the books?

Master: The only situation is whether they show the true situation regarding the purchases and the goods shipped for them or for their account. If they do they probably should be admitted.

Mr. Wolf: I suppose if they do not, Mr. Cohen will call to your attention any errors

3132 or omissions which the books contain, but I think the most complete answer is that that hasn't anything to do with this particular end of the books because those are sales and not purchases. We will meet the burden of the sales end when we get to it.

Mr. Cohen: My adversary has so clear a conception of what he wants to prove that he sometimes confuses it with the actual testimony elicited, entirely ignoring the changes in the testimony. It is not true that the Tatum and Ferguson-McKinney

accounts only relate to the sales because as 3493
the witness has testified frequently goods in
the gray were held at the mills for customers' orders. Now, where goods are held at the mills and the record of the invoices is made in a specific book and it is shown that those records are made direct from the invoices it requires the proving of but very few instances of goods held at the mills to show that the record is not a contemporaneous record of merchandise received, but it is a contemporaneous record of merchandise if you please, by the vendor. You have a record there of executory contracts but not 3494
a record of executed contracts. It is one of the familiar things in this case to confuse the terms purchases and sales and to call a completed sale an order given by a customer, entered in a book where the goods have not yet been actually delivered and in like manner it is customary here to treat the situation for comparison as though goods invoiced from the mills to the Schwab-Kepner Company in fact represented an executed sale by the mill to the Schwab-Kepner Company the goods being under control and dominion of the Schwab-Kepner Com- 3495
pany. Now, nowhere, according to this witness's testimony, has there been kept a contemporaneous record of actual completed sales of merchandise from the mills to the Schwab-Kepner Company, just as nowhere has there been kept an accurate contemporaneous record of goods sold, completed sales to customers, and for precisely the same reasons that your Honor ruled out the exhibits this morning this exhibit must be

3196 ruled out. They are not contemporaneous records of sales by the mills to the Schwab-Kepner Company any more than the others are records of sales by the Schwab-Kepner Company to its customers. They are records of orders given by the Schwab-Kepner Company to the mills. It may be interesting to know how much they owe and how much they had charged against them on their contracts but certainly it has no value for determining the actual merchandise on hand or the actual amount of sales in the gray.

3197 Master: What do you contend they show, Mr. Wolf?

Mr. Wolf: I think the testimony shows what I have said before, that the routine of the business was that Barlow would be handed these invoices by Mr. Heene; that Mr. Heene only handed over the invoices to Barlow in the vast majority of instances after he had issued shipping instructions to the mills; the goods were on contract to the Schwab-Kepner Company with the mills; contracts which obligated the mills to sell

3198 and deliver these goods to the Schwab-Kepner Company and there isn't any evidence that they haven't done so. The shipping instructions as I have said were issued in the vast majority of instances before the invoices were handed to Barlow and when he received the invoices before the instructions were issued, those instructions were sent forward to the mills within two or three days thereafter. The witness has testified that the shipping instructions to the mills were in writing and that he retained a duplicate copy of the shipping instructions to

the mills until he received a bill of lading 3499
from the mills and then he filed the shipping instruction away with the bills of lading. That is the testimony and I claim that it shows a completed sale and delivery by the mills.

Master: You claim that these books show purchases by the Schwab-Kepner Company from the mills—do you claim that it shows the sales made by the Schwab-Kepner Company?

Mr. Wolf: No, I am not going to touch upon that end of the matter at all because I don't think it is of any importance except 3500
in one aspect. I think we should know the amount as bearing upon the verbal testimony given.

Master: Do you think these books show that?

Mr. Wolf: I haven't touched that end of the case yet. I claim, however, that these books do show from the documents in evidence and the course of business testified to by the witness that these books do show the purchases made by Schwab-Kepner Company from the mills.

Ruling reserved. 3501

Sworn to before me this 3rd day of May, 1911.

Adjourned to Friday, May 5th, 1911, at 10:30 A. M.

3502 UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

In the Matter
of
THE SCHWAB-KEPNER COMPANY,
Bankrupt.
} In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E Dockendorff, before
3503 Edwin G. Adams as Special Master, at No. 115 Broadway, New York City, on Friday, May 5th, 1911, at 10:30 A. M.

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and GARRARD GLEN, Attorneys for Trustee.

Master: At the last session, Mr. Wolf referred in evidence Exhibits B206 and B207 for identification; these are the two so-
3504 called purchase journals of The Schwab-Kepner Company. It appears from the testimony that the entries in these books were made from the invoices sent to The Schwab-Kepner Company from the various mills and that these entries were made without regard to shipments of goods from the mills. To my mind the entries in these books constitute a record only of goods invoices by the mills and do not throw any light upon the question as to the amount of goods actually shipped by the mills to or for the

account of The Schwab-Kepner Company. 3505
I shall, therefore, sustain the objection to the offer and I will say further that from the testimony of these several witnesses, Mr. Barlow, Miss Walsh and Mr. Heene, it seems to me the only way you can show the actual shipments from the mills is by offering in evidence all of the shipping orders upon which the only entry of the shipment was kept.

Mr. Cohen: That is only a record of the order to ship, given by The Schwab-Kepner Company to mills.

Master: And when the bills of lading 3506
were received, an entry of the shipping date was made on the shipping order. That is the only record of the actual shipment. When the bills of lading were received, an entry was made on the shipping order that those goods were shipped at such a time and it seems to me that if the invoices and the shipping orders are offered in evidence, that then these purchase journals can be received in evidence.

Mr. Wolf: The invoices and the shipping orders are in evidence already. I beg pardon, I withdraw that.

3507

Mr. Cohen: The bills of lading, if your Honor pleases, which are in evidence, are only those relating to sales covering accounts transferred to Dockendorff that were produced from Dockendorff's own files, and Mr. Wolf is mistaken as to the invoices being in evidence.

Mr. Wolf: I have corrected that statement on the record.

Mr. Cohen: I understand that it has been corrected.

3508 Mr. Wolf: I should like to argue a little more at length with respect to the admission of the sales books, copies of which went to Mr. Dockendorff, Exhibits R905, R910 and R911 for identification.

Mr. Cohen: Your Honor rejected those books for the same reason that you did these this morning.

Mr. Wolf: In connection with that, I asked Mr. Dockendorff at the last hearing, or rather, at the hearing before, to produce copies of the sales books which he received and I would like to ask Mr. Dockendorff if
3509 those are here now.

Mr. Cohen: We have no copies of the sales books, except the copies of the collateral sheets which are in evidence.

Mr. Wolf: Miss Walsh testified that she made a triplicate typewritten copy of the entries in the sales books and sent one copy to Mr. Dockendorff, one to the customer and one was put in the sales book.

Mr. Cohen: They were written on different blanks.

Mr. Wolf: Written at the same time, one a copy of the other.

3510 Mr. Cohen: Those were the certificates of indebtedness covered by the schedules of collateral in evidence.

Mr. Wolf: We ask Mr. Dockendorff to produce if he has them in his possession the copies of the entries in the sales books which Miss Walsh testified she sent to him.

Mr. Cohen: The totals of all these sales, and that is all that is material in the evidence, appear in the collateral schedules accompanying the transfer.

The Master: These particular documents, are they in evidence?

Mr. Cohen: No, we haven't produced them. 3511
We put in evidence a sample of them and the collateral schedules were put in evidence and the evidence was that in each instance there was a certificate of indebtedness for the names mentioned in the collateral schedules and to the amount mentioned in the collateral schedules and that they were all in the form put in evidence. The evidence shows, therefore, that the collateral schedules which were made the basis of the accountant's work here and made the basis of the schedules which were put in evidence showing the condition of affairs in amount 3512
agree with the totals of all of these certificates of indebtedness so that so far as data is concerned unless some question arises as to the debts, as to the amounts charged against the customer there is no necessity for putting them in. We stipulate and admit that the amounts contained in the collateral schedules which have been put in evidence agree with the total amounts of each of the certificates of indebtedness which were sent to us and which are in each instance one of the three things that Miss Walsh testified she wrote, so that the total figure appears 3513
already in evidence— what we got.

Mr. Wolf: That doesn't meet my request. I want to have it appear that I have asked Mr. Dockendorff to produce the carbon copies or duplicate originals or original typewritten sheets which were exact copies of the sales book which Miss Walsh testified she sent to Dockendorff.

The Master: Isn't that the certificate of indebtedness?

Mr. Wolf: Not as I understand it.

3514 The Master: When this certificate of indebtedness was put in evidence somebody testified as to how that was made up, that it was made by making a carbon impression and that the original was in certain form of some sort—whether that was Mr. Dockendorff or Mr. Williams or Mr. Kepner or who it was I don't recall—but I do remember testimony that the original was on one certain form and the certificate on a different form, the typewriting was the same but the form was different.

3515 Mr. Cohen: Your Honor's recollection of the fact is correct but your recollection of who testified is not accurate. The practice was this, as I understand it, so far as keeping a record of purchases, the invoice was made out in the customer's name; simultaneously a carbon copy of that invoice was made and simultaneously the same figures were written on the certificate of indebtedness, the form of which is in evidence and the certificate of indebtness would go to Mr. Dockendorff together with the collateral schedule covering the various certificates of indebtedness that were sent down. The original in-

3516 voice that was the first impression was sent to the customer, the second impression was either the impression that appears in the sales books or an extra copy for the use of the customer's use from which the entries were made into the sales books, that was Miss Walsh's testimony.

The Master: And the third impression was the certificate of indebtedness, isn't that your understanding, Mr. Wolf?

Mr. Wolf: In other words, these sales

books are an exact copy of the invoices sent 3517
to Mr. Dockendorff.

Mr. Cohen: Not at all. All of the customer's accounts were not sent to Mr. Dockendorff although they were under obligation to send them. The only accounts we got are those which appear on the collateral schedules and even those, as your Honor already knows, do not represent actual shipments to customers in some instances and in very considerable instances. One of the contentions is that we didn't get valid accounts receivable because of the fact that goods weren't actually sold and delivered.

Mr. Wolf: The testimony of Miss Walsh 3518
was and I think if you will look at Exhibit R905 you will see that it is a carbon copy. Miss Walsh testified that when she made these sheets up, they are loose leaf sheets, she made them from the invoices, and she testified that she made these up either in triplicate or duplicate and sent an exact copy to Mr. Dockendorff, but in any event a copy of those went to Mr. Dockendorff and that is what I am asking Mr. Dockendorff to produce. I am not interested in the fact that it may be a duplication of testimony for the 3519
purpose of my request, for as soon as it is produced I am going to offer it in evidence and then I am ready to discuss whether it shall go in evidence and I do not understand that anything more should be discussed.

Mr. Cohen: If Mr. Wolf means by this request that we produce anything further than the certificates of indebtedness covered by the collateral schedules which have been put in evidence then our answer is that we have no other documents.

Mr. Wolf: Then, Mr. Referee, the papers

3520 that I ask for are not produced and under the testimony I offer a copy of it in evidence, in other words I offer Exhibits R905, R910 and R911 for identification in evidence.

Mr. Cohen: I object to that upon precisely the same ground as before. The evidence has not been made relevant or material because of the fact that we received certificates of indebtedness and collateral schedules. Your Honor had that in evidence before when you made your ruling.

Mr. Wolf: On that subject, Mr. Cohen's objection as made before, which I didn't ar-
3521 gue at that time because I expected to discuss it at some later time, was this: there is testimony in the record that certain sales were made by the Schwab-Kepner Company which were not actually delivered and therefore these books are not an accurate record of deliveries made under the sales; the testimony of Miss Walsh being that she copied the entries into these books from the invoices to the customers and she didn't know whether or not delivery had been made. Therefore, Mr. Cohen's argument is that these books merely show sales made or apparent sales
3522 made by The Schwab-Kepner Company to its customers. Now, I am not prepared to take issue with that statement at the present time but the evidence is that —or rather there isn't any evidence and I don't know of any that can be produced at this time of any such sales made by the Schwab-Kepner Company where deliveries were not made except within the last month or two preceding the insolvency, but assuming that the testimony is as broad as Mr. Cohen contends for, I still think that these books are admissible for this

reason; under the allegations of our answer 3523
we have said that the Schwab-Kepner Company was guilty of fraud upon its creditors and that Mr. Dockendorff's position estops him from maintaining a lien on this account. Now your Honor will remember that the Bankruptcy Law says and the State statutes say that a transfer for a present consideration if made in good faith is valid. Now the question in this case is, did Mr. Dockendorff act in good faith. As bearing upon that we have the testimony as yet uncontradicted that on the first day of August, 1910, he was informed by Mr. Williams that the Schwab- 3524
Kepner Company was insolvent. He therefore knew that he was dealing with an insolvent concern. The decisions hold that when a man knows of the insolvency of the firm with which he continues to do business that the law then imposes upon him a more rigorous obligation and holds him to the utmost good faith. Now, the testimony in this case is, as you have heard from Mr. Kepner, and I think from Mr. Dockendorff himself, surely from Mr. Kepner, that Mr. Kepner and Mr. Dockendorff frequently discussed the business operations of the Schwab-Kep- 3525
ner Company and they discussed the amount of purchases that the Schwab-Kepner Company should make and the amount of sales that it should make, the amount of money that it needed in order to meet maturing obligations in order to allow it to continue in business and in order to obtain that money they would have to go out and buy a certain quantity of goods and sell those goods, assign the accounts to Dockendorff and get the money from Dockendorff to pay

3526 off the maturing obligations and thus give themselves an extension of life. That testimony was given by Mr. Kepner and it seems to me in connection with that as well as in connection with the other testimony that is before your Honor, even if you ruled that the entries in these books are merely evidence of agreements on the part of the Schwab-Kepner Company to sell and they don't show deliveries, inasmuch as we charge in our answer that Dockendorff thus became a party to the fraud upon the creditors of the Schwab-Kepner Company, that in corrobo-

3527 ration of what Mr. Kepner testified we are entitled to have put in evidence now, the fact that Dockendorff received a copy of these papers, that is already in evidence, we are entitled to have the papers put in evidence just the same as we would Mr. Kepner's oral testimony that he saw Mr. Dockendorff and said to Dockendorff "I have agreements today for the sale of so much worth of goods" it is a notice to Dockendorff and in corroboration of the oral testimony of Mr. Kepner it seems

3528 to me if on no other theory we are entitled to have these books before you in evidence.

Master: Miss Walsh has testified that a copy of each of these entries went to Dockendorff; that would show notice to him that these goods at least had been invoices by the Schwab-Kepner Company.

Mr. Cohen: Then I ask that Miss Walsh be recalled before they are taken as the basis of this offer for the reason that Miss Walsh testified that she had nothing to do with the sales department and had nothing to do with the actual shipment of the

merchandise. The fact is, as we know it 3529
that it is not true that a copy of these entries were sent to Dockendorff except when a certificate of indebtedness was made out.

Master: That is what she testified, Mr. Cohen, but there is no evidence in her testimony that certificates of indebtedness were made out in every case where there is an entry in these books.

Mr. Cohen: I ask for opportunity to cross examine her upon that point.

Master: At page 1336 Miss Walsh testified, "If a customer required a duplicate 3530
bill two copies went to the customer, original and duplicate and the certificate we sent down to Mr. John E. Dockendorff. Q. What certificate? A. Certificate of indebtedness."

Mr. Cohen: But, your Honor, that testimony must be taken with the understanding that she didn't do the work of sending the certificate to Mr. Dockendorff and there is no evidence in any part of her testimony that the certificate was sent down simultaneously with the entry in the books. It may have been a week later, the custom 3531
of houses of this kind is not to send the certificate of indebtedness in every instance when they make out the invoice, there is absolutely no evidence to show that. If it is material to show what invoices we actually received, what certificates of indebtedness we actually received, that is already in evidence.

Master: How is that in evidence?

Mr. Cohen: By our collateral schedules.

3532 the collateral schedules show every certificate of indebtedness that we ever received.

Master: They show your compilation of them.

Mr. Cohen: No, sir, they show—the collateral schedules were made by The Schwab-Kepner Company, the record shows that. Those are the only certificates of indebtedness we ever received. The testimony of Mr. Dockendorff on that score was taken, compilations from the collateral and remittance sheets have been received in evidence but we are not discussing those. The

3533 collateral schedules represent the carbon copies of what were made out in the office of the Schwab-Kepner Company and which accompanied the certificates of indebtedness sent to us, they represent in each instance the groups of certificates sent to us. Of course in office practice in order to have the certificate of indebtedness ready whenever it is to be sent it is typewritten and all that Miss Walsh could have testified to is that, because your Honor will not accept her testimony as a bookkeeper

3534 on anything more than what she knew. All that she could testify is that she made out these three copies for use in the manner that we have ascertained but as to whether or not we received them our evidence of the collateral schedules is the best evidence because it shows precisely what we did receive and insofar as it is necessary to ascertain the total amount of the accounts receivable assigned to us that already is in evidence in these collateral schedules. Now, upon the statement of a typewriting bookkeeper that she prepared a third sheet

at the same time that she made the entries 3535
in the books, certainly we are not to be charged with receiving in every instance a copy of them. Mr. Wolf would argue that we had notice of every order received; we did not and there is no evidence yet in the record that we did, the only record in the evidence is that we did receive certificates of indebtedness. The evidence which Mr. Wolf himself has offered is to show that these certificates of indebtedness do not actually represent goods sold and delivered to customers but represent contracts, executory contracts where the goods 3536
were to be delivered from the bleacheries and that the goods were not delivered from the bleacheries until some days after. The exhibit of the accountants is based upon the theory, some kind of a legal theory that the accounts didn't become accounts until the goods were actually shipped to the bleacheries so that upon his own statement of the case made heretofore on the record, the record of the total amount of certificates of indebtedness sent to us is not record of the total amount of goods actually sold and delivered to customers. We al- 3537
ready know that $120,000 worth of accounts of that sort were not made valid security by reason of the fact that the goods were not delivered from the bleacheries. Now, insofar as it is necessary to show notice to us, that notice is already in evidence. We have come here with our own records, have produced a complete record of every certificate of indebtedness which we received. We have nothing else, we never

received anything else in the way of copies of invoices. We have produced all of the bills of lading we ever received. Now, Mr. Wolf has made general statements as to what the evidence shows; I certainly do not accept those statements. It is absolutely untrue that Mr. Kepner testified that the amounts of sales and purchases were discussed with Mr. Dockendorff and that Mr. Kepner would go out and buy goods in accordance with the financial needs of his business and then sell them. That exists only in the imagination of counsel, it represents the architect's plan upon which he purposes to erect a building of evidence which he has absolutely failed to erect so far and has nothing to do with the present question. The question presented to your Honor now is precisely the same as you ruled upon last week, namely, are these books records of actual transactions or are these books records of contemplated transactions. Your Honor knows that the purpose of this urgency at the present time is to show the comparative financial condition from day to day of this concern; it certainly cannot be made any basis for the comparative financial condition to treat the invoices sent to customers as the equivalent of actual transactions. Your Honor knows that this offer each time of evidence to show notice to Mr. Dockendorff has followed an effort unsuccessful before you to put the books in evidence as evidence of actual what all this effort has been made for is facts. What these books are offered for, to show the actual condition of this con-

pany and your Honor has properly ruled 3541
that these books do not show the actual condition. Insofar as it is necessary to show notice to our clients of what invoices the Schwab-Kepner Company had from customers upon which they intended to ship goods that evidence is in the collateral schedules which are supported by every certificate of indebtedness which we ever received. Now, there is no evidence in the case whatever that the collateral schedules we received conform in every respect to these books. They will undoubtedly conform in some respects because after the 3542
certificate of indebtedness was sent to us then we had a carbon copy of the figures and words that appear in that book in that entry but until we did get that we did not; and upon our statement and Mr. Dockendorff's testimony your Honor is certainly not going to admit these books to charge us with other entries of other things of which we never received a copy, simply because the typewriter who made the typewritten statement says that she made one for Mr. Dockendorff. Of course that was the course of business, they had 3543
to have it ready and while she was typewriting she might just as well typewrite the three copies, but whether or not this book contains a typewritten statement of what was sent to us can only be determined by an actual comparison of the schedules with that book.

Master: I will allow Mr. Cohen to cross examine Miss Walsh before the books are received in evidence.

3544 Mr. Wolf: I now ask Mr. Dockendorff again to produce the certificates of indebtedness.

Master: It seems to me that the certificates of indebtedness are properly admissible for the purpose stated by counsel and if the certificates of indebtedness constituted copies of the entries in the books then the books should be admitted and if you want to cross examine Miss Walsh on them you may do so.

Mr. Wolf: We ask that Mr. Dockendorff produce the certificates of indebtedness
3545 which he had in his possession.

Mr. Cohen: If your Honor pleases, there is a very simple and complete way of settling this matter and determining exactly what evidence under the decision that your Honor had made can be entered. We will undertake through our accountants to take our collateral schedules and if the purpose is to show the amount of goods offered for sale or which the Schwab-Kepner Company thought they could sell, make a complete list either from the records we
3546 have or from this record and submit that to the Court.

Mr. Wolf: We thank Mr. Cohen for his offer and decline and insist that these papers be produced.

Master: Do you intend to produce them?

Mr. Cohen: We are not in a position to produce them at this time.

Master: Then I will allow the secondary evidence to be received and allow Mr. Cohen to cross examine Miss Walsh.

Mr. Wolf: In order that I should be saved the burden of proving the mailing

of all these papers I ask that Mr. Dockendorff produce all the papers in his possession or disclose to counsel where they are so that I can subpoena them. Or, I will ask Mr. Dockendorff to take the stand so that I may examine him to find out where the papers are so that I can subpoena them. 3547

Mr. Cohen: It already appears in the record that the certificates of indebtedness which we received and all the certificates of indebtedness that we received are the certificates referred to in the collateral schedules which were put in evidence. It is not, therefore, necessary to inquire where those certificates of indebtedness are at the present time to establish the receipt by us of the certificates of indebtedness showing those transactions. It already appears as counsel knows, outside of the record, that the certificates of indebtedness were transferred to banks and counsel knows that I have appeared here for these banks without disclosing their identity, because we do not desire to disclose the banks with whom we do business. If the purpose of the inquiry of Mr. Dockendorff now is solely for the purpose of finding out where the certificates of indebtedness are in order to show the receipt by us of those certificates it is unnecessary, because it already appears in the record. If the purpose is simply to inquire of Mr. Dockendorff as to whether or not there are any other certificates of indebtedness in existence than those covered by the collateral schedules, that has already been covered by his tes- 3548 3549

3550 timony. It is inconceivable to us that that can be the real purpose of any such inquiry.

Master: Mr. Wolf has stated that he desires to ascertain the particulars of the transactions that appear upon the certificates of indebtedness.

Mr. Cohen: We are willing to stipulate that the particulars, we are willing to admit that they are the same as appear in these books. We have been willing all along to concede that on the certificates that we have received.

3551 Mr. Wolf: As I understand you, Mr. Cohen, you will undertake to have checked up for me the certificates of indebtedness received by Mr. Dockendorff as you call them, I call them invoices, with the sales books I have offered in evidence marked R905, R910 and R911 for identification?

Mr. Cohen: Yes.

Mr. Wolf: I will accept that. We do not bind ourselves to accept the results which your account shows as correct. We will accept it subject to our examination.

3552 Mr. Cohen: We will prepare a schedule showing what accounts appearing in these books appear on the collateral schedules which we received and we will stipulate that the entries on our certificates of indebtedness are the same as appear in the entries in this book.

Mr. Wolf: We understand that we will be furnished with a tabulation of the results compiled by your accountant, but we do not undertake to accept them as correct.

WILLIAM ARTHUR CORBETT, sworn. 3553

By Mr. Wolf:

Q. Mr. Corbett, what was your business prior to December 1st, 1910?

A. Secretary and Treasurer of the Schwab-Kepner Company.

Q. How long had you been Secretary and Treasurer?

A. I was Secretary for nearly two years and a half and Treasurer since May, I think, 1910.

Q. What branch of the business was under your charge and supervision?

A. Merchandise.

Q. Sales of goods also? 3554

A. No, not directly.

Q. Who had charge of the sales?

A. Mr. Victor.

Q. Who had general charge and supervision of the records, books and papers of the Schwab-Kepner Company?

A. That is a broad question.

Q. What did you have to do with reference to keeping the records of the Schwab-Kepner Company?

A. The entire merchandise department was under my supervision, I had nothing whatever to 3555
do with the accounts.

Q. You mean the accounts of customers?

A. The book accounts.

Q. What system did you have for keeping account of the goods of the Schwab-Kepner Company, which were at mills and also at bleacheries and in warehouses and other places?

A. If the goods were in the gray all we had was the record of the gray stock book, the gray stock book and the invoices themselves would show where the goods were.

3556 Q. Invoices from whom?

A. The mills.

Q. Is this book that I now show you marked Exhibit R1004 for identification the gray stock book you refer to?

A. Yes, sir.

Q. You say that the goods in gray were entered in this book?

A. Yes, sir.

Q. That is, the goods in gray at the mills?

Mr. Cohen: I object to that question upon the ground that it is leading.

3557 Q. Where were the goods in gray?

A. I meant the invoice for the gray goods received, that book is the first entry in which any record is made from that invoice, but that book does not and could not show where the goods were except in certain instances where a lot number is put opposite which would show that they had been invoiced to a bleachery and by referring to that lot number you could tell where the goods were, whether they were at the mills or had actually been shipped to the bleachery.

Q. Did you have any goods in gray at any place other than at the mills?

3558 A. Well, do you mean the usual product?

Q. Yes.

A. Yes.

Q. Where?

A. Occasionally at the mercantile warehouses.

Q. Sent there from the mills?

A. No, sir, they were goods sent to customers and declined for some reason or another by the customer and stored in the warehouse.

Q. Now, you have testified as I understand it that when the invoice came from the mills and the

goods were left in the mills in gray they were 3559
entered in this gray stock book?

A. It didn't make any difference whether they were shipped or held, they were entered into this book in every instance.

Q. When the invoice came from the mill?

A. Yes, sir.

Q. Now, what was the routine of the business when the goods were held at the mill, the gray goods were held at the mill?

A. I didn't catch that.

Q. What was the routine of the business when the goods in gray were held at the mills and not shipped to the bleacheries when the invoice was 3560
received?

A. The blank in the gray stock book opposite the entry of this particular bill would remain blank; that would signify that those goods were still waiting for shipping orders.

Q. And when they were shipped what entry would be made?

A. If the goods were shipped to the bleachery to be finished the lot number or bleachery would appear; if sold in the gray to the customer, the order number and the date of the sale would be entered.

Q. So that—

3561

A. Every blank would represent goods at the mill.

Q. Those items would be entered in the column marked disposition in the gray stock book?

A. Yes, sir.

Q. Now, this gray stock book would show at any period of time whether the goods were at the mill in gray or had been sent to the bleachery or sold direct to the customer from the mills?

Mr. Cohen: Objected to, leading.

Objection sustained.

3562 Q. Mr. Corbett, when goods were left at the mills what entries were made in the column marked disposition?

A. None.

Q. And when would you make an entry in the column marked disposition?

A. When the goods were shipped from the mill no matter where they were shipped to.

Q. Would you enter where they were shipped?

A. No, only a lot number or an order number by reference to either of which you could tell where the goods actually were delivered.

Q. In other words, by tracing the lot number
3563 and the order number into another book you could tell?

A. Yes, sir.

Q. In what other book would you trace the lot or order number?

A. The lot number would be traced by our invoice to the bleachery and the order number by the order cards. The orders were kept card system and not order blanks.

Q. Now, from June 1st, 1910, on, who had charge of the gray stock book?

A. Why, I am not positive about that, but I think Mr. Heene, either Mr. Henne or Mr. Gatow.

3564 Q. And who made the entries in the column marked disposition?

Mr. Cohen: Objected to upon the ground that this witness cannot testify, the witness Heene who kept the book is here.

Objection overruled.

A. Fred Heene.

Q. Look from June 1st, 1910, on, and tell me who else made entries in the column marked disposition besides Mr. Heene, if anyone did.

A. There are two other handwritings, neither of which I can positively identify.

Q. What was the routine of the business with 3565
respect to the time when the entries were made in the column marked disposition in the gray stock book?

Mr. Cohen: Objected to upon the ground that it has not yet been shown that the witness knew how or by whom the entries were made.

Q. If you know.

A. At the time the disposition was made.

Mr. Cohen: I should like to know if he knows.

3566

A. Yes, sir; I know.

Q. What was the custom with respect to that?

A. The disposition was marked in the gray stock book at the time the goods were finally shipped from the mills, whether to the bleachery or to the customer.

Q. And how would the Schwab-Kepner Company be advised of the shipment from the mill?

A. By shipping notice in some cases and the bills of lading from the mills.

Q. Shipping notice from the mill?

A. Yes, sir.

Q. Who would receive that shipping notice or 3567
bill of lading from the mill?

A. It would come in the regular mail and be handed out to Heene, Miss Zeisloft or Gatow.

Q. And then, the entries would be made in the column marked disposition?

A. Yes, sir.

Q. So that no entries in the column marked disposition were made until the shipping notice or bill of lading was received from the mill?

Mr. Cohen: Objected to, leading.

Objection sustained.

3568 Q. Was any entry made in the column marked disposition prior to the receipt from the mill of the shipping notice or bill of lading?

A. Yes, sir.

Q. Explain that, the routine of that, Mr. Corbett?

A. When the goods were sold in the gray and the shipping order would come through from the sales department it would be marked off in the gray stock book with the order number opposite the bills that were sold.

Q. That would indicate a sale of goods in gray under the column marked disposition?

3569 A. Yes, sir.

Q. Now, will you just read one such entry so that it may be differentiated from a shipment of the goods in gray to the bleacheries?

A. Here are several.

Q. Just take one, what does it say under disposition?

A. "F. M. & Co. O No. 2011."

Q. Now, read us an entry that would indicate a shipment of goods to bleachery.

A. "Sayles lot SB 365."

Q. "Sayles" would indicate what?

A. That they were inventoried to the Sayles
3570 Bleachery under our order 365 and by referring to that particular invoice, you would find when the goods were received at the Sayles Bleachery.

By the Master:

Q. These entries you have referred to, Ferguson-McKinney Company, order number 2011, you say that would indicate a sale of goods in gray?

A. Yes, sir, of those particular goods.

Q. And that entry was made—

A. At the time that shipping order came from the sales department to the office to be charged up.

Q. And that shipping order was then sent to 3571
the mill?

A. That was supposed to be.

Q. And was any record made as to whether these goods were shipped by the mills to Ferguson-McKinney Company?

A. If the goods were actually shipped the shipping date would appear on the shipping order a copy of which was kept at the office.

Q. Would any entry of the shipment be made in this book?

A. No, sir.

Q. So that, that item, of itself merely indicates that a shipping order or sales order to that effect 3572
was forwarded to the mill?

A. It doesn't even indicate that, as a matter of fact. All that that could indicate is that a charge was made against the Ferguson-McKinney Company on order 2011 of the amount, the record here doesn't indicate anything further than that.

By Mr. Wolf:

Q. That is with respect to the goods in gray?

A. Yes, sir.

Q. But in the goods sent to the bleachery, that indicates an actual shipment of goods from the mills to the bleachery?

3573

Mr. Cohen: Objected to, leading.

Q. What does that indicate?

A. The mere entry of the item here of itself doesn't signify anything further than that it has been invoiced to the bleachery under this lot number, but by referring to 365 it will bear the date of the actual arrival of the goods at the bleachery.

Q. Mr. Corbett, in the year 1909, was any inventory made of the merchandise of the Schwab-Kepner Company?

A. Yes, sir.

3574 Q. When?

A. On the 31st day of December, 1909.

Q. How was that inventory prepared?

A. That was prepared from our records showing goods that should be at the different bleacheries and that was confirmed by reports from the different bleacheries confirming our figures.

Q. In other words, if your records showed a certain quantity of goods to be at the bleacheries you had that checked up with the records of the bleacheries and confirmed it?

A. Yes, sir.

Q. Did you take an inventory of the goods at
3575 the mills?

A. Yes, sir.

Q. How was that prepared?

A. As I say from the blanks appearing in the gray stock book and then writing to the mills for confirmation.

Q. So that the same process of confirmation was gone through with the mills as with the bleacheries?

A. Yes, sir.

Q. Did you take an inventory of the goods at warehouse?

A. Yes, sir.

3576 Q. How was that prepared?

A. We had a warehouse book in which the date of entry appeared and the date of delivery and a record of every blank was taken off and then confirmed at the warehouse.

Q. So that was checked up in the same way?

A. Yes, sir.

Q. Did you take an inventory of the goods you had in your store?

A. Yes, sir.

Q. How was that taken?

A. By our own force by checking over the actual packages.

Q. Under whose supervision was that done? 3577

A. The entire inventory was under my supervision.

Q. And was any record made in the books or records of the Schwab-Kepner Company respecting that inventory?

A. So far as my duty went the moment the inventory sheets were filled in and prices and extensions made that was the end of it, so far as I was concerned. The total amount and value of these goods was given to the bookkeeper which he placed, I suppose, on his books.

Q. How was the price of the goods determined?

A. The market value at the time of the taking 3578
of the inventory.

Q. And as I understand your testimony the total of the inventory thus taken was placed in the records of the Schwab-Kepner Company?

Mr. Cohen: Objected to as leading and the witness has already testified that he doesn't know anything about that.

Question withdrawn.

Q. What records, if any, were placed upon the documents of the Schwab-Kepner Company with respect to the total of this inventory?

Mr. Cohen: Objected to upon the ground 3579
that it is an indirect way of getting this witness to testify to something that he doesn't know anything about.

Objection sustained.

Q. I repeat the same question and add to it, if you know?

Mr. Cohen: Same objection.

Sustained.

Q. Do you know what records were placed in

3580 the documents of the Schwab-Kepner Company with respect to the total of this inventory?

Master: Answer yes or no.

A. Yes.

Master: How do you know?

A. I know in that particular instance, December 31st, I kept Mr. Cowan waiting before he could prepare his balance sheet before I could give him that figure, kept him waiting two or three days, and that occurred by the delay of the bleacheries in answering my letters confirming the records.

3581 Q. What records were made of this total of this inventory of December 31st?

Mr. Cohen: Objected to. I don't think it has been shown what record was made or how he knows that any was made.

By the Master:

Q. How do you know what was done with these figures, Mr. Corbett, you gave them to Mr. Cowan?

A. The Treasurer at that time.

Q. You gave them to him?

A. Yes, sir.

3582 Q. How do you know what he did with them?

A. Of my own personal knowledge I know nothing further than that.

Q. Did you see the entries he made?

A. No, sir. I kept in my possession the inventory sheets showing the value of the merchandise. I kept them always.

By Mr. Wolf:

Q. Do you know what that total was?

Mr. Cohen: Objected to, the inventory sheets are the best evidence.

Objection sustained.

Q. Where are the inventory sheets, Mr. Corbett? 3583
A. They are here in the office.
Q. Will you please find them, pick them out.

Recess Taken.

After Recess.

Mr. Cohen: During recess I have had a cursory examination made and subject to very unsubstantial corrections I find that during the period in question, that is from the first of August, 1910, down to the time of the filing of the petition, the entries in the books 3584
that were offered in evidence this morning the so-called sales journals, Exhibits 12905, 12910 and 12911 are the same as those contained in the certificates of indebtedness that we had and for the purposes of the case I am prepared to admit that fact.

Mr. Wolf: Then I offer Exhibits 12905, 12910 and 12911 for identification in evidence.

Mr. Cohen: Now, I object upon the ground that it is incompetent, irrelevant and immaterial for the same reasons that we urged yesterday.

3585
Exhibits 12905, 12910 and 12911 for identification are received in evidence for the purpose of showing the goods charged to customers based upon shipping orders copies of which charges were sent to Mr. Deckendorff in the form of certificates of indebtedness.

Mr. Wolf: I want to add to that statement that the certificate of indebtedness which went to Mr. Deckendorff as I understand it is an invoice and I would like to have Mr. Deckendorff produce one of these so-called certificates of indebtedness.

3586 WILLIAM ARTHUR CORBETT, examination continued.

By Mr. Wolf:

Q. Mr. Corbett, you testified before recess that certain inventory sheets were prepared as of the close of business December 31st, 1909?

A. Yes, sir.

Q. Are these the inventory sheets that I now show you?

A. Yes, sir.

Q. And these are all of the inventory sheets are they?

3587 A. I presume they are. They are all I could find in the file.

Q. Now, what record was kept of any new merchandise purchased subsequent to December 31st, 1909?

A. We had the original mill invoices and as I said this morning, we entered them in this gray stock book.

Inventory sheets marked Exhibits 12101 for identification, May 5th, 1911.

Q. What record was kept of the merchandise sold subsequent to December 31st, 1909?

3588

Mr. Cohen: Do you mean by sales, goods ordered or actually shipped to the customers or do you mean orders taken for goods?

Mr. Wolf: I will let the witness tell us.

Mr. Cohen: I ask that the witness in answering the question be directed to distinguish between legal sales consummated by delivery to the customer and sales executed.

Mr. Wolf: Mr. Referee, I should like to be allowed to continue with the examination.

The Master: I think the question is proper as it is. 3589

Question read.

A. The order cards themselves, and they were sales and not deliveries, the cards would be put in what we called a billed and held drawer, kept separate from the goods actually sold and delivered.

Q. If you sold goods, Mr. Corbett, what record would be made on these cards to which you have just referred?

A. The name of the customer, the order number, price and date of the charge.

Q. And what record would be made as to whether or not apparent sales were actually delivered? 3590

A. We had—I don't know just what we called it—a book in which when the teamster brought in the signed receipts one of the clerks entered into these books the date of the actual delivery to the particular customer.

Q. That would affect goods delivered in New York City?

A. Yes, sir.

Q. How would you keep a record of the goods delivered from the bleacheries?

A. Through the bills of lading.

Q. What record was kept of that on these cards?

A. None whatever on the cards. But in this de- 3591
livery book or where we kept the record of the delivery even though the goods were shipped direct from the bleacheries to the customers without coming to us or being handled by us the bill of lading would be mailed to us and then that would be entered in the same manner as a carman's receipt in this book.

Q. In other words you could tell from this record which goods had actually been delivered by the

3592 bleacheries to the customers on sales made by the company?

A. No, sir, we couldn't—yes, we could by the bills of lading.

The Master: By the entries in this book you speak of?

A. Yes, sir.

Q. Now have you made a compilation of the merchandise on hand with the Schwab-Kepner Company either at the mills or bleacheries or warehouse or storerooms or any other place up to August 1st, 1910?

3593 A. Yes, sir.

Q. Will you please state how you prepared that?

A. By using the inventory of December 31st, 1909, as a basis and then building up on that, taking all the purchases made since the first of January, 1910, up to and including August 1st, 1910.

Q. You started with the inventory sheets of December 31st, 1909?

A. Yes, sir.

Q. Which showed as you have testified, all merchandise on hand at that date?

A. Yes sir.

Q. And you built up from that?

3594 A. Yes, sir.

Q. What do you mean by that?

A. By laying out all the cards shown on the inventory of 1909 as not delivered prior to August 1st, 1910, laying aside all cards that had been delivered; just simply separating the cards, the delivered from the undelivered, the charged rather from the uncharged.

Q. You took the cards in your files which showed the goods had been delivered and those not delivered and separated the two sets of cards?

A. Well, I would like to correct that. What I meant to have said was we took those cards and all

that had been charged up to August 1st we laid aside and those delivered after August 1st or not at all we put on one side and were included in the new inventory as of August 1st, 1910. 3595

Q. July 31st, 1910?

A. July 31st, it is practically the same thing.

Q. Will you please produce the cards that you have just testified to as showing the goods still on hand between that period, that is December 31st, 1909, and August 1st, 1910, I mean a sample of them?

A. There is one of the cards, showing that that was charged up after August 1st, 1910, and yet was on hand at the bleachery on the first of January, 1910. That card shows the date it was finished at the bleachery. 3596

Q. What were these cards called?

A. Case cards.

Q. And these cards purport to show the goods on hand where?

A. At the bleachery unless it is marked on the cards basement or warehouse.

Offered in evidence as the form of card.

Received in evidence and marked Exhibit R1102, May 5th, 1911.

Exhibit reads as follows: 3597

3598

Exhibit R1102

"Order No.....
Case No.....Style.....Mill No....
Name..... Date..... Contract No.....
Lot No...Invoiced....Date....Price....Yards..
Remarks .....
Checked.....

Disposition

Name.....Order No.....Price....Date....
....
....
3599
....
....

Q. Who kept the cards of which Exhibit R1102 is a sample?

A. They were kept in the file in the office.

Q. Who had direct charge of the file?

A. I don't know that I can answer that question unless I say myself. Everything in that department was under my charge.

Q. Now, when goods were sent from the bleachery what record would be made on these cards?

3600 A. Sent from the bleacheries?

Q. Yes, shipped from the bleacheries?

A. None whatever.

Q. Where would the record be of that?

A. Only in the book that I have just referred to which had a record of all deliveries.

Q. Which book is that?

A. I don't think—I showed it to you this morning.

Q. Are these the two books in which those records were kept?

A. Of actual deliveries?

Q. Yes.

A. Yes, sir 3601

Q. Tell us what the system was with respect to making the entries in those two books?

A. The bleachery would send us what is known as a shipping notice and on it would appear the cases shipped that day, the case number and the name of the party to whom they were shipped. In addition to that bills of lading were sent to us and from these notices of shipment and bills of lading we would make out our delivery slips, yellow slips and give to the teamster which he had signed upon delivery of the goods and when he returned to the office the carmen's receipt a record was made in 3602
these two books, first in this one and then in this one.

Q. Which book do you refer to when you say first in this one?

A. This book is where it stated, the other one is simply a continuation of the system—

The Master: The small book was the first one?

A. Yes, sir.

Q. And the large book second?

A. Yes, sir.

Small book marked Exhibit R1103, May 3603
5th, 1911 for identification.

The large book has already been marked Exhibit R1105.

Q. Now, what records would be made of actual shipments from the bleacheries direct to customers?

A. The bills of lading were sent to us and that bill of lading was turned over to the party keeping this record and she would enter it in here the same as the delivery receipts.

3604 Q. When you say in here, you mean Exhibit R1005 for identification?

A. Yes, sir.

Q. Who made the entries in Exhibit R1005?

A. Miss Zeisloft.

Q. And who made the entries in R1103?

A. That goes way back, several.

Q. Who made the entries from December 31st, 1909?

A. One page that I come across right here are all my entries, every one of them, and there are several here that I can't just now identify.

Q. So that these two books would show actual
3605 sales of goods, actual deliveries of goods from the bleacheries?

Mr. Cohen: Objected to as leading and involving a conclusion of the witness.

Objection sustained.

Q. Now, in building up the inventory from December 31st, 1909, will you please explain that again so that we may have clearly what you added to that inventory and what you deducted from it to ascertain the goods on hand on July 31st, 1910?

A. I deducted the goods billed prior to August 1st and added all goods purchased between January
3606 1st, 1910, and August 1st, 1910, which we had on hand at that time.

Q. And at what price?

A. At the then market price.

The Master: Market price of August 1st?

A. The market price that I had at that time—to be exact I think it was the 17th of July, the cost sheet I had of that date. I don't think there was any material change.

Q. From time to time was a list kept in the

Schwab-Kepner Company of the market price of the goods? 3607

Mr. Cohen: Objected to upon the ground that it is immaterial, irrelevant and not binding.

Objection sustained.

Q. What price did you take in arriving at the value of the goods on hand July 31st, 1910?

A. The market price.

Q. You said something a moment ago about the cost sheet of July 17th, 1910?

A. Yes, sir.

Q. What sheet is that? 3608

A. That is a sheet which was made up from prices submitted to us by the different brokers in the city and compiled by, at that time I presume by Mr. Victor upon which the selling price of the goods was based, after getting the cost price of the gray goods and the cost of finishing.

Q. And that is the price list that you took as the basis of valuation of the goods as of July 31st, 1910?

A. Yes, sir.

Q. Now, Mr. Corbett, did you make a computation in the manner you have testified of the merchandise on hand at July 31st, 1910? 3609

A. Yes, sir.

Q. What was it?

Mr. Cohen: What do you mean, the total?

Mr. Wolf: Yes.

Mr. Cohen: Objected to upon the ground that it is incompetent and no proper foundation has been laid.

Question withdrawn for the moment.

Q. Now, you say you started with the inventory sheets marked Exhibit R1101 for identification?

A. Yes, sir.

3610 Q. Now, what records did you use in ascertaining the amount of merchandise to be added to that inventory to ascertain the merchandise on hand July 31st, 1910?

A. I took all the purchases between January 1st, 1910, and August 1st, 1910.

Q. As appearing in what?

A. The actual original invoices from the mills and the entries in the gray stock book.

Q. Now, which original invoices did you use, will you please produce them?

A. I don't know that I could produce any particular invoice.

3611 Q. Produce them all. Have you the original invoices before you?

A. Yes, sir.

Considered Exhibit R1104 for identification, May 5th, 1911.

Q. Now, which entries in the gray stock book did you use?

A. Every entry made in the gray stock book since January 1st, and including January 1st, 1910, up to August 1st.

Q. Who made them?

3612 Mr. Cohen: Objected to, already covered. Objection sustained.

Q. Now, you took the original invoices from the mills which have been marked for identification and the entries in the gray stock book and added those to the inventory of December 31st, 1909?

A. We followed the goods in their disposition from the mills to the bleacheries and then in their finished state took the actual condition as of August 1st, 1910, whether gray or finished and in order to get at those figures we had our own cards which we made from the information given to us by the

bleacheries and we also had their own original ad- 3613
vices to us.

Original invoices offered in evidence.

Cross examination on the offer by Mr. Cohen:

Q. When you were testifying with regard to the inventory that you made on December 31st, 1909, you testified that you checked what you found you should have had at the mills and bleacheries and warehouse by getting reports from them?

A. Yes, sir.

Q. When did you make up this inventory as of August 1st, 1910, that you are testifying to now? 3614

A. About a month ago.

Q. That was of course after the bankruptcy proceedings had begun?

A. Yes, sir.

Q. You didn't make it up while with the Schwab-Kepner Company?

A. No, sir.

Q. When you checked up these things on the 31st of December, 1909, did you find any inaccuracies?

A. I suppose so, I don't know positively but it would be very funny if we didn't have out of probably one thousand cases and seven or eight different bleacheries.

Q. And the purpose of your inquiries of the mills 3615
and bleacheries and warehouses was for the purpose of finding any inaccuracies?

A. Yes, sir.

Q. You know from your experience as a bookkeeper that a record of what you should have on hand doesn't always agree with what actually is on hand?

A. In the main it does, it is only in a very few cases there is very little difference, a difference of a

3616 few yards on a few lots. You don't find an entire lot or case.

Q. Assuming that the books were kept accurately?

A. These were not taken from books, they were from the original records of the mills. We hadn't such a thing as a stock book excepting this gray stock book.

Q. I mean when you made up your inventory of December 31st, 1909 you checked up those records with the records of the mills and bleacheries and warehouses?

A. Yes, sir.

3617 Q. Now, you say that there should not be but a slight difference between the records you had and the records of the mills and bleacheries?

A. Yes, sir.

Q. That of course, assumes that your own records were accurate?

A. Yes, sir.

Q. Now, you had no balancing of records except at the time you made that inventory, no balancing during the year prior to that time?

A. We had one just about the time of the failure.

Q. No, I am talking about prior to the 31st of December, 1909.

3618 A. Yes, sir, we had one in July.

Q. You balanced up that with the mills and bleacheries and the warehouse?

A. Yes, sir.

Q. After that time when did you next have one?

A. Just about the time of the insolvency.

Q. Just prior thereto?

A. I don't know whether it was a day or two before; it might have been after the Receiver was appointed.

Q. So between December 31st and the receivership you didn't balance up with the mills and bleacheries and warehouses?

A. Not actually, no, sir, not all of the bleach- 3619
eries.

Q. And you didn't keep any regular stock book except the one you refer to as the so-called gray stock book?

A. Only the cards, individual cards.

Q. Who requested you to make this computation?

A. Mr. Suffern.

Q. And you say that you took as the basis the inventory of the 31st of December, 1909?

A. Yes, sir.

Q. Did you add to that any purchases that were made thereafter?

A. Everything.

Q. And at what price did you add the purchases, 3620
at cost price?

A. No, sir, at the market price.

Q. Market price when?

A. At the 17th of July to be exact, I think it was the 17th of July.

Q. You added the market price of goods which had been purchased subsequent to December 31st, 1909 as of the price of July 17th?

A. I thought you were asking me what price I put on the inventory of July 31st, 1910?

Q. December 31st, the prices were as of that date, December 31st, 1909.

A. As of the market of that date, yes. 3621

Q. Now, between the 31st of December and the first of August, 1910, goods were purchased?

A. Yes, sir.

Q. And you added what you thought were the purchases?

A. Yes, sir.

Q. At what prices?

A. Market.

Q. How did you ascertain the market price of those?

3622 A. From the cost sheets I had dated July 17th, made up, as I testified from prices submitted by a number of brokers in the city.

Q. So it made no difference what the Schwab Kepner Company agreed to pay for these goods you put them in at the market price of the 17th of July?

A. Yes, sir.

Q. And you added those goods at the market as of the 17th of July, to the inventory of December 31st, 1909?

A. All goods on hand at that time, yes, sir.

Q. I understood from your answers before that
3623 you added all purchases between the 31st of December, 1909, and the first of August, 1910, to the inventory of December 31st, 1909.

A. All goods on hand as of August 1st.

Q. Then you only mean that you added purchases of goods still on hand?

A. That is right. How could I go to work and include a lot of goods sold prior to that date not on hand? That would not be an inventory.

Q. Did you deduct anything?

A. I deducted all goods invoiced and sold prior to August 1st.

Q. And what price did you deduct them?

3624 A. I didn't pay any attention to price, they were not on the inventory. I might say right here for the benefit of Mr. Cohen that I have had over thirty years' experience in taking inventories. I am no greenhorn, I know how to begin and how to finish. I made inventories before some of the people here knew what business was.

Q. Did you personally keep the records of the sales of merchandise that was on hand on the 31st of December, 1909, on the cards?

A. No, sir.

Q. It was kept by your department?
A. Yes, sir. 3625

Q. Did you ever balance up these records for for the purpose of determining their accuracy?
A. Only at stock taking time.

Q. And between the 31st day of December, 1909, and the time of the failure there was no stock taking?

A. No, sir.

Q. Now, you say you have had thirty years' experience in taking inventories do you call it taking an inventory to make an estimate of what should be on hand or do you call it an inventory to ascertain the actual amount of merchandise that is on 3626
hand?

A. After you had gone through your records and find the inventory as of those records and then get it confirmed by the different parties holding the goods, I don't see what more you could expect.

Q. Did you have this inventory that you made at the request of Mr. Suffern confirmed by the various parties?

A. No, sir.

Q. So you don't think that was an actual inventory with your thirty years' experience, do you?
A. I do.

Q. Although it hasn't been confirmed? 3627
A. Yes, sir.

Q. This market sheet that you kept there, was that kept up to date, the sheet of market prices?
A. Up to date?
Q. Yes?

A. I don't know how often but I imagine at least once a month a new cost sheet was gotten out. Sometimes there was little or no difference in two or three or four months.

Q. Who kept that?

A. I don't know exactly what date, but ever-

3628 tainly the July one was made up by Mr. Victor. I think for possibly two or three months proper he made out those cost sheets and prior to that they were made by Mr. Kepner.

Q. Did you have access to them?

A. Yes, sir. I always got a copy.

Q. Did you keep it in your desk?

A. I have one in my pocket now.

Q. Why did you keep it—while you were with the Schwab-Kepner Company, I mean.

A. Because I had occasion to use it twenty or thirty times a day, sometimes.

Q. For what purpose?

3629 A. To ascertain the price, the value of a certain style of cloth.

Q. What was the purpose of that?

A. Time and time again I was called upon to wait on customers, sell goods, adjust claims; in fact, the adjusting of the claims was under my supervision all the time and it was necessary for me to have a cost sheet and a price list.

Q. Did you have anything to do with the selling of the goods?

A. Yes, sir.

Q. Did you determine the prices at which the articles should be sold with the aid of the cost

3630 sheet?

A. Yes, sir.

Q. And was that one of the reasons?

A. Yes, sir.

Q. In order that you shouldn't sell below cost?

A. Yes, sir.

Q. In order that you should sell at a profit?

A. In order to guide me in making the price.

Q. And did you make the prices with reference to the market condition?

A. Sometimes, yes.

Q. What information did you find in these in-

voices which aided you in making your computa- 3631
tion at the request of Mr. Suffern?

A. I couldn't have done it at all without these invoices. We were converters and all of the goods that we sold were not sold in the original condition, some of the goods were sold in the original condition and had all the goods been sold in that way I wouldn't have had to bother with any bleacheries and the work would have been simple but when we sent the goods to the bleacheries and the style was changed and the package and everything. We would send, say, ten bales and get a return of fifteen or eighteen cases. I had to have the invoices in order to make sure 3632
that I accounted for everything invoiced to the bleacheries and everything returned by the bleacheries to us.

Q. How many invoices did you examine in that way?

A. Everything from the first of January, up to August 1st, I wouldn't say that we examined the invoices, but the records of these invoices in the gray stock book.

Q. Then, you didn't examine these invoices themselves?

A. In some cases we had to refer to the in- 3633
voices, that is why I couldn't pick out any specific invoice.

Q. Then you didn't mean to testify that you examined every one of these invoices?

A. No, sir.

Mr. Cohen: I make the objection that the invoices were not taken as the basis of the witness's computation and are, therefore, incompetent and irrelevant.

Offer withdrawn for the moment.

Mr. Wolf: I offer the inventory sheets of December 31st, 1909, in evidence.

3634 By Mr. Cohen:

Q. What makes you feel to-day that all of these sheets comprise all the sheets that constituted the inventory that you took at that time?

A. Because they were kept in my drawer and Mr. Williams told me that they were exactly as they came here when he took this office.

Q. You can't tell from a physical inspection of them whether or not they contain all of the sheets that you made up?

A. To the best of my knowledge, they do.

Q. But you are basing that upon what Mr. Williams told you, isn't that the fact?

3635

A. No, from the order of the papers.

Q. Now, look at them again and see if you are willing to swear upon your oath that those constitute all of the sheets that you made at that time?

A. To the best of my knowledge they are.

Q. What do you mean by the best of your knowledge? Don't you mean by that to the best of your belief?

A. I mean to the best of my knowledge, just exactly what I say. I have no reason to believe that there are any missing sheets or any substituted sheets.

3636

Q. Were the sheets numbered consecutively?

A. As a rule, yes, sir.

Q. Are they now?

A. Yes, sir.

Q. Do you remember how many parts there were when you originally had them?

A. No, sir, I do not.

Q. You don't mean that they run consecutively now?

A. According to the pages and the kind of goods, there is the basement, each series is numbered consecutively.

Q. How many series are there? 3637

A. There are four here.

Q. So that it isn't an inventory consisting of pages running consecutively but it consists of four sections?

A. Yes, sir.

Q. Have you any present recollection of the number of pages in each section when you made it?

A. I have not.

Q. Was any total made to each section?

A. There was.

Q. Where is it?

A. I don't know. 3638

Q. Is there any total appearing there?

A. Not on all of them, there is on some.

Q. At the foot of each page?

A. Yes, sir.

Q. At the end of each section?

A. No, sir.

Q. Of any section?

A. Yes, sir.

Q. Which one?

A. There is one, there is another and there another.

Q. Now, can you tell from the addition of the totals of the sections that you have here what 3639
the total amount of the completed inventory was?

A. As it appears there, yes, sir.

Q. All right, tell us, please.

A. $305,557.42

Q. Now, did you take into account in putting down any of the figures on the inventory the invoice prices of the goods?

A. I said a while ago that the price put down there is the market price independent of what they cost.

3640 Q. Now, will you please answer my question after repeating what you have said?

Question read.

Mr. Wolf: I submit that that is an answer.

Master: You can answer that question by yes or no.

A. No.

Q. Then, you have made no reference whatever to what the goods cost the Schwab-Kepner Company?

A. No.

3641 Q. And the same answer is true with reference to the compilation which you made after the bankruptcy for the purpose of showing the amount of merchandise on hand as of the first of August?

Mr. Wolf: I object to that as having nothing to do with the inventory of December 31st, 1909.

Objection sustained.

Q. Have you any present recollection of what total was shown by these inventory sheets when you communicated the figures to Mr. Conran?

A. No, sir, I have not.

3642 Q. And you are basing your statement that these are all of the inventory sheets upon your belief from the fact that the sections are consecutively numbered is that right?

A. And from the fact that they were supposed to be intact just as they had come from my desk and I know that at that time it was a full and complete list.

Q. When they left your hands they were intact?

A. Yes, sir.

Q. Where did you place them?

A. In the drawer of my desk.

Q. Did you have access to them again at any time? 3643

A. After the failure?

Q. Before the failure?

A. In my desk, certainly.

Q. Was that desk locked?

A. Locked every night.

Q. Anyone else have access to it?

A. Mr. Kepner was the only one who had access to that desk after it was locked. Others had during the day time.

Q. And you kept this in a drawer or was it laid on the desk?

A. In a drawer. 3644

Q. Was that drawer locked?

A. Only when the desk was locked.

Q. There was no separate lock to the drawer?

A. No, sir, not to that one.

Q. Now, did you take this inventory out of your desk at the time of the failure?

A. No, sir.

Q. It was not in your physical possession after the failure?

A. No, sir.

Q. After you left it in your desk before the failure, when did you again see it?

A. When I was called upon to make the inventory as of August 1st in this office, that is, I saw them in the office for the first time. 3645

Q. Where did you then get it?

A. It was in a large envelope marked inventory sheets, on that table.

Q. Did you make the envelope?

A. Did I make it?

Q. Did you write on the envelope or put it in the particular envelope in which you found it?

A. No, sir, it was already in the envelope marked inventory records.

3646 Q. And the mark on the envelope was not in your handwriting?

A. That I couldn't swear to.

Q. You found it on a table in this room?

A. Yes, sir.

Q. And from the time you left the place of business of the Schwab-Kepner Company until you got these papers here, you never saw them?

A. No, sir.

Sworn to before me this 5th day of May, 1911.

3647 Mr. Cohen: I object upon the ground that no proper foundation has been laid and further upon the ground that it is not binding upon Mr. Dockendorff.

CYRUS WILLIAMS, recalled.

By Mr. Wolf:

Q. Mr. Williams, how soon after you were employed by the Receiver did you take possession of the books and records of the Schwab-Kepner Company?

3648 A. Those that were in the office of the Receivers in Elizabeth on the 17th day of December, those that had been put in storage warehouse some few days after the 11th of January.

Q. I show you Exhibit R1101, when did these papers come into your possession?

A. In January some two or three or four days after the appointment of the Trustee.

Q. Are they in the same condition now as when they first came into your possession?

A. They were in a large envelope and I never removed them until the time they were called for for the inventory of July 31st.

Q. You turned them over to Mr. Corbett? 3649
A. I did.
Q. Was there any writing on that envelope?
A. I think it was typewritten.
Q. Is that envelope here?
A. I am not sure.
Q. Who gave you these receipts, Mr. Williams, from whom did you receive them?
A. They came from the storage warehouse my recollection is.
Q. Stored by whom, do you know?
A. By the Receiver.

Mr. Wolf: I renew my offer.
Objection overruled. 3650
Received in evidence and marked Exhibit RH101 in evidence, May 5th, 1911.

Sworn to before me this 5th day of May, 1911.

WILLIAM ARTHUR CORBETT, recalled.

By Mr. Wolf:

Q. Mr. Corbett, can you give us the names of the bleacheries with whom the Schwab-Kepner 3651
Company did business between December 31st, 1909, and August 1st, 1910?

A. The Cold Spring Bleaching and Finishing Works, Yardley, Pa.; The Standard Bleachery Company, Carlton Hill, N. J.; The Sayles Bleachery, Saylesville, R. I.; The Providence Bleaching, Dyeing and Calendering Company, Providence, R. I.; United States Finishing Company, Pawtucket Branch, Providence Branch and Passaic Branch; The Queen Dying Company, Providence, R. I.; Silver Spring Bleachery, Providence, R. I.; Barrowsville Bleachery, Barrowsville, Mass.; and

American Silk Dyeing and Finishing Company, Hohokus, N. J.

Q. Are those all?

A. I think that constitutes the list.

Q. Can you give the names of the mills with which the Schwab-Kepner Company did business between those dates?

A. No, sir, I can give a partial list.

Q. We want a complete list.

A. I couldn't give it from memory.

Q. Can you refresh your recollection from the records here in the office?

A. Yes.

Q. Will you please look at the records and name all of the mills with which the Schwab-Kepner Company did business between those dates.

A. American Milling Company, Fall River, Mass.; American Textile Company, Paterson, N. J.; Athenia Textile Company, Atco, Barlow County, Ga.; Richard Borden Manufacturing Company, Fall River, Mass.; H. H. Bradley, 66 Leonard Street, New York City; Berkshire Cotton Manufacturing Company, North Adams, Mass.; Baldwin Leslie, Worth Street, New York City; Bear Mill Manufacturing Company,

Burgess Mills

New Bedford, Mass.; Barnard Manufacturing Company, Fall River, Mass.; Cornell Mills, Fall River, Mass.; Conanicut Mills, Fall River, Mass.; Corr Manufacturing Company, Taunton, Mass.; Dixon & Hull, Franklin Street, New York City; Davis Mills, Fall River, Mass.; Davol Mills, Fall River, Mass.; Daas & Teen, New York City; Danielson Cotton Mills, East Dedham, Mass.; Dartmouth Manufacturing Company, New Bedford, Mass.; Flint Mills, Fall River, Mass.;

Parish-Stafford Company, Worth Street, New York City; Granite Mills, Fall River, Mass.; Greylock Mills, North Adams, Mass.; Goswold Manufacturing Company, New Bedford, Mass.; Hargraves Mills, Fall River, Mass.; Hunter Manufacturing & Commission Company, Greensboro, N. C.; Harding, Tilton & Company, 66 Leonard Street, New York City; Harris Company, New York City; E. C. Lordley, 366 Broadway, New York City; Lamport Manufacturing Supply Company, New York City; Lincoln Manufacturing Company, Fall River, Mass.; Merchants Manufacturing Company, Fall River, Mass.; Manville Company, Providence, R. I.; New Bedford Cotton 3656
Mills, New Bedford, Mass.; Osborne Mills, Fall River, Mass.; Charles F. Pray, New York City; C. H. Pope, New York City; Potomiski Mills, New Bedford, Mass.; Parker Mills, Fall River, Mass.; Povasser Manufacturing Company, Fall River, Mass.; Edwin E. Poor & Company, New York City; Queen City Cotton Company, Burlington, Vt.; J. P. Stevens & Company, New York City; Samoset Company, Valley Falls, R. I.; Seaconnet Mills, Fall River, Mass.; St. John Reis Company, New York City; Stevens, Sanford, Jordan & Cushman, New York City; Soule Mills, Fall River, Mass.; William Stickle & Company, 3657
New York City; D. O. Tatum, New York City; Totoket Manufacturing Company, Norwich, Ct.; Tilton Mills, Valley Falls, R. I.; J. Spencer Turner Company, Worth Street, New York City; Tupelo Cotton Mills, Tupelo, Miss.; Tecumseh Cotton Mills, Fall River, Mass.; Valley Falls Company, Valley Falls, R. I.; Wilson & Bradbury, New York and Philadelphia; Woodward, Baldwin & Company, Worth Street, New York City;

3658 Weetamoe Mills, Fall River, Mass.; Wampanoag Mills, Fall River, Mass.; Wilmerding & Bisset, New York City; Wellington, Sears & Company, New York City; Warren Manufacturing Company, Warren, R. I.; Walker Bros., New Orleans, La.; E. Watson Garden Company, Amsterdam, New York.

Sworn to before me this 5th day of May, 1911.

UNITED STATES DISTRICT COURT.

3659 DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt. } In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, as Special Master, at No. 115 Broadway, New York City, on Friday, May 12th,
3660 1911, at 10:30 A. M.

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and GARRARD GLEN, Attorneys for Trustee.

The Trustee desiring to have proof from the mills and the bleacheries and the banks of facts bearing upon the assets and liabilities condition of the Schwab-Kepner Com-

pany on and after August 1st, 1910, the following plan is agreed upon: Mr. Philip S. Sutfern, the accountant for the Trustee, and Mr. Alfred J. Stern, the accountant for Mr. Dockendorff, shall proceed with all due diligence to the various mills, bleacheries and banks from whom the information is desired with a letter of authorization signed by Messrs. Hays, Hershfield & Wolf, attorneys for the Trustee, Einstein, Townsend & Guiterman, attorneys for Mr. Dockendorff and countersigned by the Referee herein authorizing and directing such mills, bleacheries and banks to answer the questions put to them by such accountants in lieu of appearing as witnesses under subpœna and giving their testimony; it being understood and agreed that when such answers are secured by the accountants their reports or such parts of them as may be considered relevant and material shall be admitted in evidence in this proceeding with the same force and effect as if the witnesses were actually called under subpœna and were sworn and gave their testimony under oath; the data to be obtained to be designated by each counsel respectively. 3663 3663 3663

Master: On the offer of the Trustee of the proofs of claim filed in this bankruptcy proceeding for the purpose of showing the indebtedness of the bankrupt corporation at the time of the bankruptcy, my ruling is that the proofs of claim are competent evidence for this purpose and that they will be received, but that they establish merely a *prima facie* case and are not conclusive.

Mr. Cohen: I except.

Mr. Wolf: I offer in evidence the adjudication in bankruptcy.

3664 Mr. Cohen: We have no objection to its being entered in evidence to prove the fact of the adjudication, but we object to it upon the ground that it is irrelevant and immaterial. The fact of the adjudication is stated in the petition and admitted in the answer and your Honor insists because of the fact that the case is in bankruptcy. Insofar as it is offered to show a condition prior to the time of the adjudication or the filing of the petition it is incompetent.

Mr. Wolf: We offer it to show the condition of insolvency at the date of the peti-
3665 tion and such inferences as go with the fact.

Received in evidence.

Mr. Cohen: Exception.

Mr. Cohen: I understand from Mr. Wolf's statement which he has just made that his case is substantially closed save for the evidence to be secured under the stipulation just entered into and such incidental matters as may arise therefrom. I am ready to-day to proceed with our case and to proceed from day to day with our case so as to close this hearing at the earliest possible
3666 moment, and in view of the fact that Mr. Stern is to go away under this stipulation I shall call him first.

ALFRED J. STERN, sworn.

Mr. Cohen: For the purpose of saving time and carrying out the spirit of the stipulation entered into between counsel, Mr. Stern has prepared two typewritten reports, one as of the 3rd of April, 1911, and the other the 11th of April, 1911. My adversary

has had the opportunity to examine these 3667
reports and makes no objection to the re-
port of April 11th going into evidence as the
direct testimony of Mr. Stern, subject, of
course, to the right of cross examination and
without being bound as to any of the theo-
ries or deductions of Mr. Stern. As to the
report of April 3rd, since the report con-
tains some argumentative matters concern-
ing which there may be some question as to
their competence as direct testimony, Mr.
Wolf and I have gone over the report and
I have agreed that for the purpose of evi-
dence, the paragraphs that are indicated by 3668
Mr. Wolf's initials and mine shall not be
treated as evidence and Mr. Wolf makes no
objection to our using this and handing it
to your Honor, these matters being treated
as matters part of our brief rather than a
part of the testimony. With that explana-
tion I ask that the report of April 11th be
marked in evidence with an exhibit number
and that the report of April 3rd be marked
with an identification number and that so
much of the report as is not bracketed in
the report of April 3rd shall be spread upon
the record and that the whole of the report 3669
of April 11th shall be spread upon the rec-
ord.

Mr. Wolf: We do not object—not bind-
ing ourselves, however, by any of the theo-
ries that the accountant may express in his
report or by his conclusions and we assume
that the documents upon which the report
is based insofar as they are not in evidence
will be put in evidence.

Master: Do you consent that the two
documents shall be marked in evidence with

3670 the qualifications stated upon the record by Mr. Cohen?

Mr. Wolf: And with the qualifications I have stated. We object, however, to the report of April 11th being spread upon the record.

Report of April 11th, 1911, received in evidence and marked Exhibit P1201, May 12th, 1911.

Report of April 3rd, 1911, is marked Exhibit P1202 for identification and those portions of it which are not bracketed in lead pencil as omitted are spread upon the
3671 record at this point:

Exhibit P1202 for identification reads as follows:

Exhibit P1202.

J. LEE NICHOLSON COMPANY

J. Certified Public Accountants

316 Broadway,

Telephone, Franklin 5207-5208

J. Lee Nicholson, C. P. A.
Herbert G. Collier, C. P. A.
3672 Alfred J. Stern, C. P. A.

New York, April 3, 1911.

Julius Henry Cohen, Esq.,
15 Williams Street, City.

Dear Sir:—

We have received through you a copy of the report submitted by Messrs. Sutfern & Son, Certified Public Accountants to Ralph Wolf, Esq., on the transactions between the Schwab-Kepner Company

and J. E. Dockendorff, and pursuant to your re- 3673
quest have examined the same and submit herewith our report thereon.

* * * * * *

We would first call your attention to the fact that in our opinion the report in its entirety does not purport to be a full and complete report of the matters covered therein, that no statement is made by Messrs. Suttern & Son to the effect that they believe the results shown represent the actual facts as far as they could be determined by them, and that all and each of the Exhibits and Schedules must be considered as qualified by the limita- 3674
tions which they enumerate in the first two pages of their report. These limitations are stated by them as follows:

"(1) That in accordance with Mr. Wolf's instructions, they have made an examination of the records submitted by J. E. Dockendorff at the hearing of January 27th, 1911, and of the shipping records turned over to them by Mr. Williams, and that their report is based thereon.

"(2) That in the preparation of the Collateral Account all "Over Overdue," was 3675
considered as being a cancellation of collateral after the amount had been charged the Schwab-Kepner Company by J. E. Dockendorff.

"(3) That as they cannot determine positively that all records relating to the transactions set forth in their report have been submitted to them or that all data submitted is in all respects correct, the Exhibits and Schedules accompanying their report

3676 must be accepted subject to such adjustments as would be necessary should further information be brought to their attention, or should it develop that the information already in their possession, and accepted by them as correct proves to be in error.

* * * * * *

Upon our part we have examined the contract between the Schwab-Kepner Company and J. E. Dockendorff, we have examined the method of treating such accounts by J. E. Dockendorff.

3677 * * * * * *

Before proceeding to a consideration of the separate schedules, it may be well to outline the nature of the transactions between the Schwab-Kepner Company and J. E. Dockendorff, and the testimony in this proceeding. This may be done by submitting, for example, a specimen day's transactions, showing how these transactions affect both the collateral account and the loan account. So that the transactions may not appear unnecessarily complicated, reference to discounts and merchandise returns is omitted.

3678 Collateral Account:

Current Collateral (excluding XC & Overdue)		
Balance (beginning)		$100,000.00
Collateral received (excluding XC)		10,000.00
Total		110,000.00
Less Collections on Current Collateral:		
(excluding XC and Overdues)	7,000.00	
Less Overdues charged back	4,500.00	11,500.00
Balance (ending)		98,500.00
Loan Value 80%		78,800.00

XC & Overdue Collateral:			3679
Balance (beginning)	30,000.00		
XC Collateral received	1,000.00		
Overdues charged back	4,500.00		
Total	35,500.00		
Less Collections on XC and Overdue Collateral	500.00		
Balance (ending)	35,000.00		
Loan Value			
Total Loan Value		78,800.00	
Loan Account:			3680
Balance (Beginning)	80,000.00		
Less Collections Current Collateral	7,000.		
Less collections XC and Overdue Collateral	500.		
	7,500.00		
Balance		72,500.00	
Amount of Advance warranted by the day's transactions		6,300.00	3681

It is thus seen that the advance warranted by a day's transactions is dependent upon the loan value of the total collateral held at the end of the day and the balance previously advanced against this collateral, and that, on the transactions indicated above, an advance of $6,300 would be warranted. You will note that the amount is less than 80% of the current collateral (excluding XC accounts) received during that day, this being due to the other factors entering in to the computation.

The amount of the advance warranted each day may be computed in a simpler manner, as follows:

3682

Collateral Received (exclud-ing XC)	$10,000.00	80%	8,000.00
Collections received Cur-rent Collateral (exclud-in XC and Overdue)	7,000.00	20%	1,400.00
Collections Received XC and Overdue Collateral	500.00	100%	500.00
Total			9,900.00
Less overdues charged back	4,500.00	80%	3,600.00
Amount warranted by the day's transaction			6,300.00

3683

You will note that whichever method of computation is followed, the results arrived at are identical.

It can be seen from the above transactions that when current collateral (exclusive of XC accounts) was received, the receipt of this collateral increased the loan value by 80 per cent. of the amount of this collateral and thus warranted the advance of 80 per cent. thereof, and that when such accounts were paid the receipt of such pay-

3684 ment by J. E. Dockendorff decreased the loan value by 80 per cent. of the amount of this collateral, but decreased the loan itself by the same amount or 100 per cent. and thus warranted the advance of 20 per cent. thereof. You will note that when XC accounts were received, the receipt of this collateral did not increase the loan value of the collateral, and thus was not considered as warranting any advance, and that when such accounts were paid, the receipt of payment thereof by J. E. Dockendorff did not affect the loan value of the collateral, but reduced the loan itself by

the amount received and thus warranted the ad- 3685
vance of 100 per cent., or the entire amount received.

You will note that when overdues were charged back, the loan value of the collateral was decreased by 80% of these accounts, but the loan account itself was not decreased, and thus a deduction was made from the advance which would otherwise have been warranted, amounting to 80% of this collateral, thereby nullifying the 80% advance made at the time these accounts were originally received and placing these accounts in the same category as XC accounts in so far as they represented collateral which enter into the computation 3686
as having no loan value. When these overdues were subsequently paid, the receipt thereof by J. E. Dockendorff did not affect the loan value of the collateral, but decreased the loan by the amount received and thus warranted an advance of 100%, or the entire amount received.

Exhibit A.

Proceeding to a consideration of the respective Exhibits and Schedules, we find that the first of these, Exhibit A, is a statement in which a num- 3687
ber of items, the inter-relation of which is not quite apparent, have been summarized and totaled. The report does not explain what the total of these items purports to be, and until such explanation is furnished, the total itself is meaningless, and until such time comment must also be deferred as to whether the respective items in this exhibit are properly included therein. Although an analysis of this exhibit as a whole must be deferred, an examination of the items appearing therein is possible at this time.

The first of these purports to represent "As-

3688 signed Accounts Receivable August 1, 1910 paid by Schwab-Kepner Company's checks." From the records enumerated in the report as furnishing the basis of the examination, it would appear that the only sources of information on the subject of remittances were the remittance sheets submitted by J. E. Dockendorff, representing remittances actually received by him.

* * * * * *

The next item purports to represent "Assigned Accounts Receivable subsequent to August 1, 1910 paid by Schwab-Kepner Company's checks." This
3689 item is subject to the same criticism as the preceding item, viz., that it does not in our opinion represent what it purports to represent with the added criticism that whereas the preceding item is supported by schedule, this item is unsupported by any schedule to which reference is made, and that what appear to be the corresponding items is shown by the "Analysis of collateral Schedules" submitted by Messrs. Suffern & Son shows, by totalling the weekly footings, an aggregate of only $16,748.68, whereas this item appears in Exhibit A as $19,736.42. Our examination has not as yet been sufficiently exhaustive to warrant us in ac-
3690 cepting either amount as correct, but we are of the opinion that at least one of them must be incorrect.

The next item on this exhibit purports to represent Accounts Receivable of August 1, 1910 in which the shipment of merchandise was subsequent to August 1, 1910, and is supported by Schedule #2. We have not as yet examined in detail the data from which this schedule was compiled, but would call your attentoin to the fact that in some cases the date shipped is not stated in the schedule, but the amount of the invoice is nevertheless en-

tered as having been shipped subsequent to August 3691
1, 1910, and that in other cases the amount paid as entered in this schedule is larger than the amount of the invoice. We would also note that in both Exhibit B and Exhibit C the total amount of what Messrs. Suffern & Son considered as representing Schwab-Kepner Company's checks was $74,631.41, that in Schedule 1 a number of these items, aggregating $11,215.35 are listed as being also included in Schedule =2, and that in compiling Exhibit A the total of $74,631.41 has been entered as well as the total of Schedule =2, thus apparently duplicating the entry of items aggregating $1,215.35.

The next item purporting to represent one in 3692
voice missing from August 1st list, for which the merchandise was shipped subsequently can pass without comment.

The next item purports to represent Accounts Receivable Assigned subsequent to August 1, 1910, that were shipped subsequent to the date of the assignment of the account and were paid prior to or remained open on November 29, 1910, this item being supported by Schedule =3. Schedule =3 purports to contain not only this information, but a list of all the accounts that were paid. In this respect this schedule is in our opinion incomplete, taking no account of the re- 3693
mittances received from overdue accounts, these being omitted entirely. We would also note that in the compilation of this report, the dates of shipment of the respective invoices was an important factor, and that it becomes pertinent to inquire upon what data the date shipped was obtained and whether such data furnished conclusive proof in all cases, or whether it merely served as the basis for inference. Entirely apart from these matters, however, and without having examined this schedule in detail by a comparison

3694 with the records from which it was compiled, we find what appears to be numerous clerical errors which prevent the acceptance of this schedule as presented.

The next item purports to represent XC accounts which were assigned subsequent to August 1, 1910, and which were paid or were still open on November 29, 1910, supported by Schedule "3A," and the following item purporting to represent accounts receivable apparently paid twice to J. E. Dockendorff, supported by Schedule "4," have not as yet been verified by us by a comparison with the records from which they were compiled,
3695 and must therefore be accepted at present without further comment.

* * * * * *

Exhibit B.

This exhibit purporting to represent the account current between the Schwab-Kepner Company and J. E. Dockendorff is in substantial accord with the account as submitted by J. E. Dockendorff, and may be accepted subject to the criticism that the items listed as "Remittances from
3696 S-K Co.," were not Schwab-Kepner Company's checks, but the checks received from customers, and subject to verification of the exhibit in detail by a comparison with the original records. This exhibit is supported by Schedule "5," to which the same remarks may be applied.

It will be noted from this exhibit that at no time subsequent to August 1, 1910, was the loan less than at that date, that it gradually increased until it reached $306,251.47, on October 29, and that at November 29th it stood at $251,638.16. It will also be seen that the advances were large

in September and October than they had previously been, that in the two months prior to the date of filing the petition in bankruptcy, the amount advanced was greater than the balance at that date, and that in the four months prior to the filing of the petition in bankruptcy the amount advanced was more than twice as much as the balance at that date. 3697

Exhibit C.

This exhibit purports to be a statement of the collateral account and is supported in part by schedule =6 and =6A purporting to be a summary of the remittance sheets. There being a number of remittance sheets listed as missing, this exhibit is in our opinion, admittedly incomplete. In the preparation of this schedule, the balance of the security account at August 1, 1910, as per the statement submitted by J. E. Dockendorff is accepted after giving effect to sundry adjustments. This balance, we are informed, respresents all accounts including NC accounts and Overdues. But in the compilation of this exhibit Messrs. Suffern & Son have considered all accounts which became overdues subsequent to August 1, 1910, as a deduction from the collateral. * * * But it is evident that in following this procedure the "Balance Security Account" becomes susceptible of misinterpretation. In our opinion these amounts do not represent the balance of the security account under any conceivable theory. They do not represent the total of the accounts assigned for the reason that the accounts which became overdues subsequent to August 1, 1910, are excluded therefrom. They do not represent the total of all of such accounts with the exception of the Overdues for the reason that the accounts which be- 3698 3699

3700 came Overdues prior to August 1, 1910, are included therein. And they do not represent the total of the accounts upon which Dockendorff computed the 80% loan for the reason that the accounts which became Overdues prior to August 1, 1910, together with the XC accounts both prior and subsequent to August 1, 1910, are included therein. Under these circumstances we believe that a consideration of these items can be deferred until such time as a theory may be conceived to conform with the exhibit, or the exhibit so amended as to conform with some theory.

3701 We would also note that no affect is given in this exhibit to certain matters including the cancellation of some of the accounts therein, which from the testimony aggregate approximately $120,000, and that this exhibit will not represent the actual condition of the collateral account unless these matters be considered in the preparation thereof.

If, however, this exhibit be used for comparative purposes in connection with the loan balances shown in Exhibit B, the following percentages are shown:

3702

3703

	Percentage of Loan to "Balance Security Account."		Percentage of Margin.
Aug. 1	50%		50%
Aug. 6	52%		48%
Aug. 13	55%		45%
Aug. 20	57%		43%
Aug. 27	57%		43%
Sept. 3	58%		42%
Sept. 10	58%	(3% off)	42%
Sept. 17	59%		41%
Sept. 24	61%		39%
Oct. 1	60%		40%
Oct. 8	61%		39%
Oct. 15	61%		39%
Oct. 22	61%		39%
Oct. 29	61%		39%
Nov. 5	58%	(3% off)	42%
Nov. 12	56%	(3% off)	44%
Nov. 19	56%	(3% off)	44%
Nov. 26	57%		43%
Nov. 28	56%	(4% off)	44%

3704

A gradual increase is thus shown in the percentage of loan to collateral accompanied by a corresponding decrease in the percentage of margin, until the end of October. After this date the tendency is apparently reversed, and a slight increase in margin is apparently shown. But this increase in the percentage of margin is more apparant than real, for if the cancelations by the bleacheries in the early part of November of approximately $120,000 be deducted from the "Balance-Security Account," the percentage of margin would be reduced to 23%. At no time subsequent to August 1, 1910 was the percentage of margin so large as at that date (50%) and by

3705

3706 the end of October this percentage had been reduced to 39%.

It is to be noted that as 4% discount was first deducted from the invoice before the 80% computation was made, that the loan value of approved collateral was 80% of 96% of the invoice, or 76.8%. The fact that the percentages shown above is less is due to the fact that all Xe collateral and some Overdues collateral is included in the "Balance Security Account" as previously explained.

The situation may perhaps be better understood by a comparison between the condition on
3707 August 1, 1910 and other dates, as shown by this exhibit:

On August 1, 1910, the balance of the loan account was	$170,018.80
On October 29, 1910, the balance of the loan account was	306,251.47
An increase of $136,232.67 or 80%.	
On August 1, 1910, the "Balance Security Account" was	341,123.91
On October 29, 1910, the "Balance Security Account" was	500,573.16
An increase of $159,449.25 or only	

3708 47%

thus showing that the loan had increased in greater ratio than the collateral. The increase in the loan was 80% of the increase in the collateral, and the percentage of margin on the loan had decreased from 50% to 39%.

A similar comparison between August 1, 1910, and November 28, 1910, shows an increase in the loan of $81,619.66 or 48 per cent, and an apparent increase in the collateral of $104,648.87 or 31 per cent., so that even on the apparent showing the loan had increased in greater ratio than the collateral.

and if expression be given in the computation of 3240
the cancellation of $120,000 at the bleacheries,
there is seen to have been a decrease in the collat-
eral during this period accompanied by an increase
in the loan of 18 per cent.

Exhibit D.

This exhibit purports to represent an adjustment
of the list of assigned accounts receivable at Au-
gust 1, 1910, as a result of a comparison with the
collateral schedules and the remittance sheets, to-
gether with Schedules Nos. 7, 8, and 9 in support
thereof. This exhibit shows that Messrs. Suffern 3710
& Son have verified the fact that on the collateral
held by J. E. Dockendorff on August 1, 1910, he
collected in cash $178,781.64 and that the merchan-
dise returned on the accounts then held by him
amounted to $45,251.63, making a total of $224,-
033.27, which amount is in excess of the amount
appearing upon the statement submitted by Dock-
endorff. The loan balance at August 1, 1910, as
per Exhibit B is $170,018.80 so that in our opinion
the contention that Dockendorff's loan at August
1, 1910, was not fully secured is shown by this ex-
hibit not to be in accord with the findings of Messrs.
Suffern & Son as set forth in their report. 3711

Exhibit E.

The consideration of this exhibit purporting to
be a memorandum of shipments covered by invoices
in the August 1st list of accounts receivable, on
which goods were shipped in other than the usual
way, must be deferred until this exhibit is compared
with the original records and the propriety of list-
ing the respective items therein determined.

Respectfully submitted,

J. LEE NICHOLSON COMPANY,

3718 6-09. Per Alfred J. Stern, C. P. A.

3712 Examination by Mr. Cohen:

Q. Mr. Stern, you are the accountant who made the reports that have just been marked?

A. Yes, sir.

Q. How long have you been a certified public accountant?

Mr. Wolf: We will admit that Mr. Stern has had all the possible experience in this kind of work that an accountant could have.

Cross examination by Mr. Wolf:

Q. Mr. Stern, will you please enumerate the
3713 papers upon which your report of April 3rd is based?

A. The two reports of Messrs. Suilern & Son, the testimony, the contract between J. E. Dockendorff and The Schwab-Kepner Company, Exhibit P17, I think that is all.

Q. Have you given us everything on which your report of April 3rd is based?

A. I don't know whether I have or not.

Q. Refresh your recollection by any papers in evidence or exhibits in evidence or anything else that will refresh you?

A. I don't recall anything else at this time.

3714 Q. Will you please refresh your recollection so that you will have enumerated everything at this time on which your report is based?

Mr. Cohen: I want to call your attention, Mr. Stern, to the fact that the testimony does not include the exhibits which would include the collateral and remittance sheets and the compilations which Mr. Dockendorff produced.

A. The account current of Schwab-Kepner Company and J. E. Dockendorff.

Q. Is that in evidence?

A. Yes, sir, I believe so. 3715

Mr. Cohen: It is.

A. Letter of Ralph Wolf to George C. Harding; I also referred to the charge back slips and collateral schedules and remittance sheets that are in evidence.

Q. Now, have you given everything?

A. Everything I recall at this time.

Q. Now, will you please enumerate upon what papers Exhibit 1201 is based, the report of April 10th, 1911?

A. I think substantially all those I have enumerated.

Q. No others? 3716

A. I think not.

Q. Now, will you refresh your recollection so that you can be sure of that?

A. I think that is all.

Q. Which two reports of Suffern & Son did you examine?

A. You mean as a basis for this report?

Q. As a basis for both reports?

A. The report of February 21st, 1911—

Q. That is Exhibit R501, isn't it?

A. I presume so, and the analysis of collateral schedules.

Q. Exhibit R502? 3717

A. Yes, sir.

Q. And those are the only two reports that you examined of Suffern & Son?

A. As a basis for this report.

Q. As a basis for either of those reports?

A. Yes, sir.

Q. Did you examine Exhibit R1003, which is the report of Suffern & Son of May 2nd, 1911?

Mr. Cohen: You mean as a basis for this report or since this report was made?

3718 Mr. Wolf: I mean did he examine it at any time.

A. Yes, but not as a basis of this report.

Mr. Wolf: I move to strike out all of the answer except yes.

Mr. Cohen: I object and submit that the answer should be allowed to stand.

Motion denied.

Q. When did you examine Exhibit R1003, which is the report of Suffern & Son under date of May 2nd, 1911?

3719 A. I examined that when it was received from you.

Q. Do you recall what date that was?

A. No, I presume it was in the early part of May.

Q. Did you examine it before it was offered in evidence?

A. I think so, yes. The same day it was offered and before it was offered in evidence.

Q. You have stated in your report of April 3rd, Mr. Stern, that you have examined the contract between the Schwab-Kepner Company and John E. Dockendorff.

A. Yes, sir.

3720 Q. And that you have also examined the method of keeping such accounts by Dockendorff?

A. Yes, sir.

Q. In examining the method of treating these accounts by Dockendorff, what books, records or documents did you examine?

A. I listened to Mr. Dockendorff explain the system he had in use in his office illustrating by specimen forms.

Mr. Wolf: I move to strike out the answer as not responsive to the question.

Motion allowed.
Question read. 3721

A. The specimen forms used in Dockendorff's office or which he showed me as being in use in his office.

Q. What specimen forms did he show you?

A. The bank sheets, charge back slips, remittance slips, ledger cards, collateral sheets—I think that is all.

Q. Now, the first thing you testified to was the bank sheets?

A. The form is the same, yes.

Q. Is there a copy of those bank sheets in evidence? 3722

A. I think not.

Q. You have testified that you examined the charge back slips; those were the charge back slips, the pink slips from Dockendorff to The Schwab-Kepner Company?

A. I don't clearly understand just what you refer to whether to the documents I examined in Dockendorff's office or the documents in this room?

Mr. Cohen: He means are they the same?

A. The form is the same, yes.

Q. You say you examined the remittance slips, were those remittance slips from The Schwab-Kepner Company? 3723

A. The same form.

Q. You examined the ledger cards of Mr. Dockendorff?

A. I didn't examine them, they were shown to me just to familiarize myself with the method in vogue.

Q. You inspected these ledger cards?

A. Well, very hastily—if you call a thirty second inspection an inspection then I did.

3724 Q. You have testified that you based your report that you have examined the method of treating such accounts between Dockendorff and The Schwab-Kepner Company on certain books and records and documents, is that not correct?

A. I don't think I stated that; I said I based a certain opinion upon the way in which the books were kept.

Q. Well, I refer you to page 3 of your report, in which you say "Upon our part we have examined the contract between the Schwab-Kepner Company and J. E. Dockendorff, we have examined the method of treating such accounts by J. E. Dock-
3725 endorff." Now, I ask you what you did examine in order to determine the method of treating such accounts by J. E. Dockendorff?

Mr. Cohen: Isn't the balance of that sentence showing the deductions which Mr. Stern made in that respect stricken from his report?

Mr. Wolf: It is.

Mr. Cohen: Then I object to the question upon the ground that it is irrelevant and immaterial. It is a mere statement of fact, the opinion based thereon and the conclusion of the witness as appearing on pages 3
3726 and 4 having been expunged at the request of Mr. Wolf.

Objection overruled.

Question read.

A. Treating which accounts?

The accounts which you referred to on page 3 of your report when you said that you examined the method of treating such accounts by J. E. Dockendorff.

A. The fact that those accounts were still kept open upon the ledger of Mr. Dockendorff was the

basis of my opinion that they still constituted col- 3727
lateral.

Q. In other words, you based your opinion upon Dockendorff's ledgers?

A. In so far as Mr. Dockendorff's books furnished the basis of my opinion and what facts furnished by Dockendorff influenced me in forming my opinion.

Q. Didn't you testify a moment ago that in order to determine the method of treating the accounts of J. E. Dockendorff you examined the bank sheets, the charge back slips, the remittance sheets, the ledger cards and the collateral sheets?

A. No, I testified as the basis of my report I 3728
examined all these matters, I didn't say as the basis for determining the proper treatment of these accounts in my opinion.

Q. Now, will you please tell me what books, records, papers or documents you examined as a basis of the statement contained on page 3 of the report of April 3rd, 1911, when you say that you have examined the method of treating such accounts by J. E. Dockendorff?

A. As I understand your question it is confined now to the consideration of the question of overdues?

Q. No, it is not. 3729

A. Well, the entire paragraph refers to the overdues and I can't answer the question.

Q. You say, "Upon our part we have examined the contract between J. E. Dockendorff and The Schwab-Kepner Company, we have examined the method of treating such accounts by J. E. Dockendorff," when you say such accounts do you not mean the accounts covered by the contract between J. E. Dockendorff and The Schwab-Kepner Company?

A. No, sir.

3730 Q. To what accounts do you refer?

A. To the credit overdue accounts.

Q. The charge backs?

A. Yes, sir.

Q. Now, what books, records, papers or documents did you examine with respect to the method of treating such accounts?

A. The ledger accounts, that is, the way they were kept.

Q. The original ledger cards?

A. The way they were kept.

Q. Anything else?

A. No, sir.

3731 Q. Was that a thirty second examination or was it a thorough one?

A. It was an examination merely for the purpose of acquainting myself with the system.

Q. Was the examination of the ledger cards a thirty second examination or was it thorough and careful?

A. It was sufficiently careful to acquaint me with the system in use, it wasn't for the purpose of determining the accuracies of the ledger cards.

Q. You made an examination of the ledger cards in order to determine the method of treating the accounts by J. E. Dockendorff?

3732 A. Yes, sir.

Q. And when you refer to the method of treating the accounts by J. E. Dockendorff on page 3 you simply refer to the method of treating the overdues?

A. At that point.

Mr. Cohen: What do you mean by at that point?

A. When at page 3 I made use of those expressions I was discussing the question of the charge backs and those remarks referred to them.

Q. You didn't refer then to all of the accounts 3733
covered by the contract?

A. Not at that point in the report.

Q. That point in the report was concerned exclusively with the charge backs?

A. Yes, sir.

Q. And in order to enable you to come to your conclusion as to the method of treating those overdues you examined the ledger cards?

A. And other things.

Q. You examined the ledger cards?

A. Yes, sir.

Q. What else did you examine, on that one particular point only? 3734

A. The testimony, and the contract between J. E. Dockendorff and The Schwab-Kepner Company.

Q. Anything else?

A. Not that I recall at this time.

Q. What testimony did you read?

A. The entire testimony.

Q. From beginning to end?

A. From the beginning up to the time that I began to attend these hearings; after that I did not read because I heard it.

Q. Did you read the testimony of Mr. Dockendorff? 3735

A. Yes, sir, in this proceeding.

Q. And Mr. Williams?

A. Yes, sir.

Q. And all of the witnesses?

A. Yes, sir.

Q. Now, the ledger cards that you examined, do you understand that they are or are not in evidence?

A. I understand that they are not in evidence except that a form thereof may be.

3736 Q. Do you understand that a form even is in evidence?

A. My impression is that it is although I may be mistaken.

Mr. Wolf: I now call upon Mr. Cohen and ask whether such a form is in evidence. If it is I have no recollection of it.

Mr. Cohen: Mr. Dockendorff brought here from his office the ledger cards at the time he brought the collateral and remittance sheets. Those cards were exhibited to the Master and to the other side and
3737 my recollection is that none of the ledger cards were put in evidence but if it is desired we will produce the form of ledger cards and put it in evidence.

Mr. Wolf: May I say in answer to Mr. Cohen that Mr. Dockendorff produced these ledger cards and exhibited them to the Master and objected to their going into evidence and did not exhibit them to counsel for the Trustee and declined so to do and in any event they are not in evidence and Mr. Dockendorff then stated that they contained information of the transactions
3738 with the banks which he did not want counsel for the Trustee at that time to know and therefore he declined to have them go into evidence or exhibit them.

Mr. Cohen: Your Honor will recall that Mr. Rosenberg spent considerable time with one of those cards in his hands examining Mr. Dockendorff as to the method of keeping those cards with the distinct understanding that the contents was not to be treated as evidence and the whole system of keeping those cards was investi-

gated by Mr. Rosenberg, I think in the absence of Mr. Wolf. In that sense the cards are in evidence; the collateral sheets, the remittance sheets were received in evidence and the cards were not offered in evidence because the original entries were to be found in the collateral and remittance sheets, but so far as the method of keeping the accounts in Dockendorff's office is concerned that was testified to with the aid of the cards by Mr. Dockendorff at very considerable length, a most exhaustive cross examination on the part of Mr. Rosenberg. 3739

Mr. Wolf: I beg to take issue with Mr. Cohen on almost every one of the statements he has made. I don't believe that Mr. Rosenberg conducted any examination of Mr. Dockendorff in this proceeding. He may have examined him under 21A when I was notpresent, but I don't believe he has examined him in this proceeding in any shape, manner or form respecting the index cards or ledger cards or anything else and I know that I haven't and I also know that Mr. Dockendorff objected to their production. 3740

Mr. Cohen: At page 285 of the record there is an examination by Mr. Wolf as to the debtor's index cards and at page 323 it appears that Mr. Rosenberg did conduct an examination in this proceeding, pages 324 to 328 appears an examination by Mr. Rosenberg on the subject of the debtor's cards, beginning at the bottom of page 323, and at page 328 it appears that Mr. Rosenberg said, "Take any card you chose out of the batch you have pro- 3741

3742 duced and show me an account returned to you," and thereupon a card was produced and the examination went on further—the presence of Mr. Wolf is shown at page 330.

Q. Now, Mr. Stern, when I first asked you upon what papers, books, records or documents your entire report was based, you didn't mention to me that you had examined the ledger cards of Mr. Dockendorff, did you?

A. I don't know, the record speaks for itself.

Q. What is your recollection on that subject?

A. I don't recall. Possibly I didn't and if I
3743 didn't it was because I forgot it.

Q. I asked you to look at all the papers you had to refresh your recollection, didn't I?

A. You did, yes. I gave you a complete list of all that I recalled at that time and asked you to refresh my recollection in case you knew of anything.

Mr. Wolf: I move to strike out everything, except yes.

Mr. Cohen: I object to that the witness called counsel's attention to the fact that he examined the contract and the records
3744 as kept by Dockendorff and further the witness called counsel's attention to the fact that he examined the testimony which included an examination of the method of keeping records.

Master: Everything after "yes" stricken out.

Q. Since that time you have testified that you examined various bank sheets?

A. Since what time?

Q. You testified this morning that you had examined various bank sheets did you not?

A. I testified that I examined a specimen bank 3745
sheet.

Q. With reference to what in your report?

A. With reference to the manner of keeping the accounts in Mr. Dockendorff's office.

Q. And that referred to the overdues, did it not?

A. In part, yes.

Q. And that referred to the method of treating accounts by Mr. Dockendorff referred to on page 3 of your report?

A. No; the reason for that was that as far as the consideration of overdues goes, as to whether they were property of Dockendorff or 3746
Schwab-Kepner Company concerned only the transactions between Dockendorff and Schwab-Kepner Company, whereas the bank sheets concerned the transactions between Dockendorff and the banks and while the overdue accounts entered into the bank sheets, they do not necessarily through any light as to whether they were Dockendorff's collateral or the Schwab-Kepner Company's.

Q. Why did you examine the various bank sheets?

A. For the purpose of familiarizing myself with the system in Mr. Dockendorff's office. 3747

Q. In addition to those you examined the charge back slips that are in evidence?

A. The forms.

Q. And the remittance sheets were examined?

A. The form, yes.

Q. And the ledger cards, which are not in evidence?

A. The form, yes.

Q. Now, did you examine anything else to determine the system of keeping the accounts with respect to the overdues?

3748 A. Not that I recall at this time.

Q. Mr. Stern at pages 5 and 6—

A. Just a moment, Mr. Wolf—your last question meant anything else so far as Mr. Dockendorff's records were concerned, didn't it?

Q. Yes. Do I understand by that that you have examined other things?

A. I have already testified that I have.

Q. On pages 5 and 6 of your report you purport to give an example of a specimen day's transactions between Dockendorff and the Schwab Kepner Company?

A. Yes, sir.

3749 Q. And in those two specimen transactions shown by you you make a disposition of the overdues or charge backs and the XC accounts?

A. Those accounts enter into the specimen, I don't know what you mean by disposition.

Q. Well, you purport to show the disposition of those two items in those two specimen transactions which is the regular routine course of business as made by Schwab Kepner Company and Mr. Dockendorff?

A. The only way I can answer that is to say that they enter into the day's transaction I have outlined. I do not know whether your inter-
3750 pretation of disposition and mine would be the same.

Q. Upon what books, records, papers or documents do you base the disposition in charging or crediting which you made of the overdues or charge backs as shown in these two specimen day's transactions.

A. Upon the contract and upon the system in use in Dockendorff's office which I have already testified to, upon the account current; I think that is all.

Q. You have said that you based the disposition

of the overdues or charge backs on the account cur- 3751
rent, among other things?

A. Yes, sir.

Q. What do you find in the account current with respect to the overdues and charge backs?

A. The account current led me to the opinion or strengthened the opinion which I had that the loan was to be considered as one loan and not as specific loans.

Mr. Worf: I move to strike out the answer upon the ground that it is not responsive.

Mr. Cohen: Objected to.

Motion allowed. 3752

Question read.

A. The answer was intended to be altogether responsive, I am only trying to connect it. The specimen day's transactions as shown in the report are upon the theory that the loan was one loan and not specific loans and the account current merely entered into this tabulation in that it strengthened my opinion that the loan was one loan instead of specific loans.

Q. Did you find any items in the account current, either as a debit or credit that you can now point to as an item representing in whole or in part a charge 3753
back or overdue?

A. No entry was made in the account current at the time the overdue was charged back; when the overdue was paid for and came in as cash it was credited in the account current and when as a result any advance was made the actual advance was entered into the account current.

Mr. Wolf: I move to strike out the answer as not responsive.

Question read.

3754 Q. Now, I ask you to answer yes or no.

A. In the sense that I outlined it in the previous answer no items is in whole or in part a charge back either at the time of remittance received or an advance made and no items in the account current represent the actual charging back of the account at the time it is charged back.

Mr. Wolf: I move to strike out as not responsive.

Motion denied.

Q. Can you, or could you by an examination of the account current determine any item in that
3755 account current which represented in whole or in part a charge back or overdue?

A. What do you mean by charge back or overdue?

Q. I refer to the same thing that you referred to in the specimen day's transaction on pages 5 and 6.

A. Those pages refer to various matters, first the actual charging back of the account and also to the payment of the account.

Q. I call your attention to pages 5 and 6—you have used the words overdues charged back, precisely what did you refer to?

A. Yes, but there were two transactions, one was
3756 the actual charging back and the other was the payment, if the accounts were paid.

Q. What do you call an overdue or charge back?

A. An overdue charged back is merely the same as a certain kind of account receivable and in referring to that, first of all the account is credited and second the account is liquidated.

Q. So, in other words, you draw a distinction between the bookkeeping entry and the payment?

A. No, I merely am explaining the entire transaction to you.

Q. Can you, or could you, by an examination of the account current pick out any item in that ac-

count current, either debit or credit which repre- 3757
sents in whole or in part the actual charging back of an overdue or the actual payment of an overdue charged back, and I ask you to answer that question yes or no.

Mr. Cohen: I object to that unless the witness can answer yes or no.

Objection overruled.

A. I don't think I can give you a yes or no answer on that because your question is two questions.

Mr. Wolf: I move to strike out the last part of the answer.

Motion allowed. 3758

Q. Have you a copy of the account current? You have produced a copy of the account current?

A. I think that is what it is.

Q. Let us take the first item in this account current—or take any item in August, August 17th, 1910, a debit of $2,500, can you say from an examination of this account current whether or not that represents in whole or in part a charge back?

A. The item in itself—I can't say that the item in itself represents in whole or in part a charge back, but the amount of that item may have been determined as a result of the amount of the charge 3759
backs paid on that date.

Mr. Wolf: I move to strike out the answer.

Motion denied.

Recess taken.

After Recess.

ALFRED W. STERN, resumed.

By Mr. Wolf:

Q. Mr. Stern, referring to the account current,

3760 Exhibit P9, the first item August 1st, 1910, $8,500, on the debit side can you tell whether or not from an inspection of that item in that account current or any other item in the account current whether it contains in whole or in part a debit for charge back?

A. It doesn't contain a debit for charge back, meaning by charge back the actual charging back of the account.

Q. Can you tell me by an inspection of the item itself or any other item in the account current whether that item has anything to do with a charge back and if so to what extent?

A. Do I understand that that question confines
3761 me to a consideration of the account current only or the figures in the account current, together with whatever other information I may have had as explanatory of the figures?

Q. I am referring simply to the account current alone.

A. Whether that in itself indicates anything at all with reference to the charge backs?

Q. Yes.

A. It does not unless you consider that the amount itself may have been determined by the charge backs paid on that date.

Q. Is there anything in the account current itself
3762 which indicates or would indicate to an accountant or to anybody else that $8,500 has anything to do and if so to what extent with charge backs charged on that day?

A. Not unless you made some further investigation.

Q. Isn't it a fact that taking the account current alone without reference to any other document that you cannot determine any item in this account current that refers to or contains in whole or in part a charge back item?

A. I would like to answer that question cate-

gorically if you would limit your question to the charging back of the charge back item. 3763

Q. Well, the charging back of the charge back item?

A. No.

Q. Can you or can you not tell—I want the record clear—from the account current whether any item debit or credit contains a charging of a charge back item in whole or in part?

A. I can tell that it does not.

Q. How can you tell that?

A. Because the debit items upon the account current represent the cash advanced on other charges, such as commission and accountants' salaries, 3764
while the credits represent the actual remittances received.

Q. So, is there anything in the account current which indicates that the items in the account current contain in whole or in part charges or payments for charge backs?

A. Oh, yes, the payments for the charge backs are included in the account current.

Q. Take the debit items, the charges, is there anything in the debits, the charges from Dockendorff to the Schwab-Kepner Company which indicates to you what portion if any of the charges represent charges for charge backs? 3765

A. No.

Q. That isn't indicated at all, is it?

A. No, sir.

Q. By no sir, you mean that it is not indicated?

A. That is what I mean.

Q. Now, take the credit side of the account and take the first item, August 1st, 1910, as a sample, $1,022.52, is there anything in that item viewed from the account current alone which indicates that that is a payment made by the Schwab-Kepner Company or a credit to the Schwab-Kepner Com-

3766 pany because of a payment of a charge back and if so to what extent?

A. The figures upon the account current in themselves do not give any information, but the figures can only be taken in connection with the data from which the figures were obtained and if that data were considered it would give the information.

Q. But I have asked you to confine yourself to the account current?

A. I have only tried to make my answers clear.

Q. I want you to make the answers to the questions. If I understand your testimony correctly, Mr. Stern, you cannot pick out of the credit items
3767 which I have called to your attention, August 1st, 1910, $4,022.52 from the account current alone what, if any, portion of that is a payment on account of a charge back item?

A. If I were to confine myself to the account current alone without reference to any other data which should be examined, I could not.

Mr. Wolf: I move to strike out "which should be examined."

Motion allowed.

Q. So it is true, is it not, that confining yourself to an examination of the account current
3768 alone that you cannot tell on the debit or credit side of this account current what items refer to charges or payments of charge backs?

Mr. Cohen: Objected to upon the ground that it has already been covered.

Overruled.

Question.

A. Yes, it is true, this statement in itself does not indicate what items are charge backs in whole or in part.

Q. Now, referring to the contract which you

say you have examined in order to arrive at a 3769
disposition of the charge backs as shown on pages 5 and 6 of your report; will you please read the portion of the contract which led you to arrive at the disposition of the charge backs as shown on those pages?

A. For one thing on page 3 which is part of the 4th paragraph, "All the accounts receivable which the party of the second part shall not include in the total of the accounts upon which the amount of the loan is based, and the withdrawn accounts, shall be held by him as collateral to the loan, and shall be collected by him, and he shall account to the borrower therefor." 3770

Q. Is there any other provision in the contract which you consider as pertinent with respect to your theory of the preparation of the specimen day's transactions?

A. Oh, I think the contract in its entirety.

Q. I mean with regard particularly to the charge backs.

A. Why, I think so.

Q. Will you please read it?

A. The 7th paragraph of Clause 3 on page 3, the last clause reading, "and such lien shall extend to all the assigned accounts receivable."

Q. Have you given everything now? 3771

A. Not yet. The entire paragraph 4 on page 3—paragraph two in so far as it relates to the amount of accounts on which the loan shall be computed; clause 4 of paragraph 3 on page 2 I think that is about all.

Q. Now, will you please state, Mr. Stern, whether or not those provisions of the contract which you have just read, together with the account current would enable you to prepare a specimen day's transactions as sent forth on pages 5 and 6 of your report?

3772 A. I think they would, but I took other things into consideration.

Q. Well, now, referring to the contract and referring to the account current alone, you think that they would enable you to prepare a specimen day's transactions as set forth on pages 5 and 6, of your report?

A. I think so.

Q. Will you please, from these two documents alone prepare a specimen transaction say of August 3rd, 1910?

A. My answer is wrong I guess, Mr. Wolf, do you wish me to correct it?

3773 Q. If you want to correct it, I want a correct answer.

A. It would be necessary to have all of the data which is included in the specimen day's transaction, namely, the collateral received and the various classes of collateral liquidated and the accounts charged back and the amount of loan made on that date, together with the previous loan balance.

Q. You couldn't set up the specimen day's transaction as appearing at pages 5 and 6 of your report from the account current and the contract.

3774 A. As far as the theory goes but not as far as the figures go.

Q. Set it up in theory on the 3rd of August just from the contract and the account current.

A. From memory?

Q. No, on a piece of paper.

A. I have already said that I couldn't give you the figures.

Q. In order to have the figures you need other data?

A. Yes, sir.

Q. You have testified that you did in preparing the specimen transaction appearing at pages 5 and 6 of your report; use other data? 3775

A. I don't think so.

Q. Didn't you testify that you used three things in preparing that transaction, first the contract, second the system in use in the office and third the account current?

A. For the purpose of the theory of the transaction for the purpose of preparing specimens.

Q. In order to set forth the theory of the transactions you used those three things.

A. Yes, sir.

Q. Do you mean to say that you could set up the theory of the transactions without those three things that is the contract, the system and the account current? 3776

A. I could set up the theory from the contract alone, but I did also examine the other things, and also the testimony.

Q. Now, you have added the testimony? You mean that there were four things you examined in preparing the theory of pages 5 and 6 your specimen day's transaction, or do you wish to eliminate the testimony?

A. No, I read the testimony, and if there was anything in the testimony which did not coincide with the theory I would have amended the theory to that extent; I would have amended the specimen day's transaction to whatever extent the testimony showed it should be amended. 3777

Q. What use did you make of the system in use in Dockendorff's office in preparing the specimen day's transaction which appears at pages 5 and 6 of your report?

A. For the purpose of determining whether or not NC and overdue accounts remained collateral

3778 of Dockendorff and if so to what extent they entered into the loan value of the collateral as Dockendorff computed the loan.

Q. Now, what particular records did you examine and do you comprise within the terms used by you, the system in use in Dockendorff's office?

A. I think I have already covered that.

Q. Cover it again please.

A. The following forms—ledger cards, the remittance sheets, collateral sheets, charge back sheets—I think that is all.

Q. Did you use the bank sheets?

3779 Mr. Cohen: Do you mean for the purpose of making this theory?

Mr. Wolf: Yes.

A. I think so, I think they entered into the proposition.

Q. Now, referring to the account current, did you take any particular—did you take the charges of any particular day and prove the same in accordance with the theory which you have set forth on pages 5 and 6 of your report as being a specimen of a day's transactions?

A. No, sir.

3780 Mr. Wolf: We are ready to suspend our cross examination of this witness at this time until Mr. Cohen has put in evidence all of the papers which are the foundation of his report as it appears from our cross examination that there are records which this witness examined which are not in evidence and it is difficult for me to continue to cross examine the witness when met with statements on his part about records not in evidence which I have never seen and which I do not know would be

admissible if offered. I refer to the ledger 3781
cards and the bank sheets.

Mr. Cohen: The witness has stated upon the record that all he referred to with reference to his examination of the ledger cards was the form, which is already in evidence, and so far as the bank sheets is concerned we will submit one of those.

By Mr. Cohen:

Q. For the purpose of the theory upon which you made the specimen day's transaction appearing in your report did you take into account the actual contents of any of the bank sheets 3782
that you looked at?

Mr. Wolf: Objected to as leading and calling for a conclusion.

Mr. Cohen: Did you or did you not?

Mr. Wolf: I object to that as leading—the witness has already testified as to what he has done.

Objection overruled.

Question read.

A. I took into account the manner of making the entries upon them and I saw forms upon which the entries had been made. 3783

Q. Did you rely upon the entries or upon the forms?

Mr. Wolf: Objected to calling for a conclusion.

Overruled.

A. Upon the forms and the manner of making the entries upon the forms.

Q. Did the entries themselves enter into any deductions or calculations that you made?

3784 Mr. Wolf: Objected to, already answered, leading and calling for a conclusion.

Overruled.

Question read.

A. No, sir.

Q. Now, in considering the ledger cards to which you refer did any of the entries on those ledger cards enter into any of your deductions or calculations that you made in your report?

A. No, sir.

Q. Did any of the data upon these ledger cards form the basis of any theory or conclusion contained in your report?

3785 A. The data itself, no; the manner of making those entries, yes.

By Mr. Wolf:

Q. You testified that the entries on the ledger cards did not of themselves enter into the theory of your report, is that correct?

A. They did not enter into any computation.

Q. Did they enter into any deductions or opinions expressed in your report?

A. The manner of the entries that were made, yes.

3786 Q. Could you have told what the manner of making the entries was without an examination of the entries themselves?

A. You mean specimen entries, I examined specimen entries.

Q. And could you have seen what the manner was without taking into account those specimen entries?

A. I think the manner of making the entries upon the cards has a bearing upon the proposition.

By the Master:

Q. You couldn't have determined the manner of

making entries if you had seen ledger cards in 3787
blank, could you?

A. Not unless I were to take verbal explanations.

Q. Is the same true of the bank sheets—is it true that you could have determined the manner of making the entries if you had seen a blank bank sheet?

A. I think I could, but at the same time I did see the entries.

Q. Would any one of these cards or anyone of these bank sheets give the information?

A. As far as the overdues are concerned it would be better to have a sheet covering an overdue account.

Q. Did you know what particular cards you 3788
looked at?

A. No, I do not.

Q. Or bank sheets?

A. No, sir.

Q. Did you look at more than one of each?

A. Yes, sir.

Q. Was there any difference in the manner of making the entries upon the several that you looked at?

A. No, sir.

Q. They all followed the same form?

A. Yes, sir.

Q. So that it could be ascertained from one card 3789
and one sheet as well as from several?

A. Yes, with this understanding that on a card which showed only accounts none of which were overdue, none of which were charged back, of course that card would not show any charge backs or overdues.

Q. But a card that did contain such accounts would show everything that a card contained without such accounts and the entries with regard to charge backs also?

A. Yes, sir.

37280 Mr. Cohen: We rest our theory upon the testimony and the exhibits already in evidence and are satisfied to have it stand or fall upon them.

By Mr. Wolf:

Q. Mr. Stern, will you please prepare from the contract between Dockenhoff and the Schwab-Kepner Company a theoretical specimen day's transaction, from the contract alone or from the contract and the account current and those two papers alone referring to the different paragraphs of the contract and the different items in the account current for
37281 the items in the specimen day's transaction.

Mr. Cohen: The witness has already stated what are the elements to be known. It would be a simple matter to prepare a table or form, but obviously since the amount of collateral on hand is not shown in the account current which is a mere record of cash transactions and since the contract contains no data as to cash or collateral, it would be physically impossible for any living person to prepare a theoretical calculation which would show the actual contract —he could show what the contract called
37282 for.

Q. You have already testified that you could prepare a theory, have you not, Mr. Stern?

A. I think I testified that I could prepare the form which is what I meant when I said a theory.

Q. Independently of figures, take A, B, C, D and F and prepare the form.

A. It would be the same as I have on page 5.

Q. Will you please write it off on a sheet of paper from the contract alone and refer for your authority for each transaction to the separate paragraphs of the contract.

Mr. Cohen: I object to that as immaterial since the witness has testified that the form would be the same as in his report. I have no objection to his taking the form and stating his authority for each step in the form. 3793

Q. Take the form on page 5, you have the first item the balance on hand $100,000, that is an arbitrary figure?

A. Yes, sir.

Q. The collateral received on that date excluding X6' you figure to be $10,000 making the total collateral on hand $110,000?

A. After receiving that $10,000.

Q. Then you deducted the collections of the current collateral excluding the overdues and the X6'? 3794

A. Yes, sir.

Q. Where is your authority for that in the contract, show me the clause in the contract to which you refer?

A. At page 3 where it says "It is mutually agreed that the party of the second part shall be under no obligations to include any account receivable which is not approved by him, both as to the solvency of the purchaser and as to the amount of the credit extended, or otherwise, in the total of accounts receivable upon which the amount of the loan is based; and that he may withdraw at any time any account receivable from the accounts upon which the amount of the loan is based." 3795

Q. Now, will you please read the balance of the sentence which you left unread?

A. "In which case the borrower shall immediately pay the amount thereof to the party of the second part."

Q. Now, the first part of that paragraph 4 "that the party of the second part shall be under no obligation to include any account receivable which is not approved by him both as to the solvency of the

3796 purchaser and as to the amount of the credit extended, or otherwise, in the total of accounts receivable upon which the amount of the loan is based;" do you understand that that refers to XC accounts?

A. Yes, sir.

Q. And that the balance of the paragraph refers to the overdues or charge backs, so-called?

A. Yes, sir.

Q. Now, did you notice that in the remaining portion of that clause referring to the overdues or charge backs it says "he may withdraw at any time any account receivable from the accounts upon
3797 which the amount of the loan is based in which case the borrower shall immediately pay the amount thereof to the party of the second part," did you notice that?

A. Yes, sir.

Q. It says that the Schwab-Kepner Company were immediately, in case the account becomes a charge back, to pay the amount thereof to Dockendorff?

A. Yes, sir.

Q. Is that the only authority that you can find in the contract which permits your theoretical calculation on page 5 and justified your deducting
3798 from the total collateral received, the collections of the current collateral plus the overdues charged back; and if there is any other provision in the contract which you consider justifies your course I wish you would point it out.

A. I think the entire specimen is based on the entire contract.

Q. Will you show me the clause in the contract that permits you to add to the collections on current collateral the overdues charged back as a deduction from the collateral received, excluding the XC's?

A. I think the clause that I read, clause 4 on page 3799
3 justifies the deduction of the overdues charged back from the current collateral.

Q. Don't you see that that clause by its very terms requires that in the event of a charge back the Schwab-Kepner Company must pay the amount of the charge backs to Dockendorff?

A. Yes, but the effect is the same.

Q. Do you consider then by your theoretical computation on page 5 that the Schwab-Kepner Company has paid to Dockendorff the amount of the charge backs?

A. No, but I consider that they have reduced the amount of their loan to which they are entitled, the 3800
amount of the loan has been reduced.

Q. Doesn't the contract say that the Schwab-Kepner Company shall pay to Dockendorff the amount of the charge backs immediately upon the charging back thereof?

Mr. Cohen: Objected to upon the ground that the contract speaks for itself.

Overruled.

A. It does.

Q. Then isn't it a fact that if you were constructing this theoretical account on page 5 upon the contract that you would have made entries in this 3801
theoretical account by which Dockendorff would have charged back these overdues to the Schwab-Kepner Company and they would have paid those charge backs if you were strictly following the contract?

A. I think not Mr. Wolf. In other words I was trying in this contract to separate the collateral account from the loan account and I think I would have handled it in identically the same way.

Q. I am talking about the specimen day's transactions.

A. So am I.

3802 Q. I am asking you whether or not the contract doesn't, in words, provide that, in the event of an account becoming overdue, that the Schwab-Kepner Company shall be charged with it and that they shall pay it to Dockendorff?

A. No, I don't think it says that the Schwab-Kepner Company shall be charged with it, it says that it shall be withdrawn from the amount of collateral upon which the loan is based, but it says that they shall pay it.

Q. What do you consider that means?

A. I consider that it means this, that in the event of a charge back, the amount of collateral
3803 upon which the loan is based or computed shall be reduced and that, therefore, the amount of the loan itself is reduced and in order to counterbalance that reduction in the amount of the loan to which the Schwab-Kepner Company is entitled, the Schwab-Kepner Company is obligated to reimburse Dockendorff to that extent.

Q. Do you understand that the Schwab-Kepner Company was paying to Dockendorff the amount of the charge backs as the contract required?

A. I don't quite understand that question.

Q. Do you consider that

3804 Mr. Cohen: I object to that, as to whether or not the witness considered that the legal effect, it is immaterial. In the final analysis your Honor will have to determine—will have to legally interpret this contract. This witness has used his own interpretation and in doing so has made a sample so as to assist your Honor in understanding the situation if you accept the legal theory of the computation of the witness. The witness says that he thinks his theory is sustained by the evidence and exhibits in the case and

the practice of the parties; whether or not 3805
it is sustained by that evidence is for your Honor to determine.

Objection overruled.

Q. You say in Clause 4, do you not, that the Schwab-Kepner Company was obligated to pay to Dockendorff the amount of the charge backs?

Mr. Cohen: Objected to upon the ground that it has already been answered.

Objection sustained.

Q. Do you consider that when you add the charge backs to the collections on current collateral and then deduct that total from the collateral received, 3806
that the Schwab-Kepner Company was paying to Dockendorff the amount of the charge backs?

Mr. Cohen: Objected to.

Overruled.

A. Not actually, but the same result was obtained.

Q. Simply looking at the contract; is it not a fact, Mr. Stern, that the theoretical report prepared by you on page 5 is not strictly in accordance with the contract?

A. No, that is not a fact.

3807

Mr. Cohen: You mean Mr. Wolf's statement is not the fact?

A. Yes.

Q. Do you say that it is strictly in accordance with the contract to add the collections on current collateral and the overdues charged back and deduct that total from the collateral received?

A. Yes, sir; and the only additional entry that would be made is this, that if the Schwab-Kepner Company did pay to Dockendorff the amount of the overdues that were charged back, then that

3808 amount would appear in the loan account at the bottom of that specimen. In other words, the specimen there is a separation of the two accounts, the loan account and the collateral account, the withdrawal of that collateral, or what Dockendorff thought was collateral, upon which the loan was computed, reduced the amount of the collateral upon which the loan was computed and if the Schwab-Kepner Company had paid the amount of those overdues charged back, then the amount that they had paid would be included in the loan account as an additional payment.

Q. You understand the additional of that item
3809 is merely for the purpose of obtaining the total?

A. Yes.

Question read.

A. The specimen day's transaction on page 5 does not, or rather, the entries to which you refer are not for the purpose of expressing the payment of the overdues charged back but for the purpose of expressing the withdrawal of those overdues which were charged back from the collateral.

Q. Do you consider that the contract says that the overdues shall be withdrawn and not paid by the Schwab-Kepner Company?

3810

Mr. Cohen: Objected to upon the ground that it contains two questions.

Overruled.

A. No, I think the contract says that the overdues shall be withdrawn and paid by the Schwab-Kepner Company.

Q. So two things must be done, they must be withdrawn by Dockendorff and paid by the Schwab-Kepner Company?

Mr. Cohen: Withdrawn from where?

Mr. Wolf: The witness has used the word withdrawn. 3811

A. In my opinion the contract provides that upon the withdrawal, the Schwab-Kepner Company shall be obligated to pay.

Q. What other clause do you find, if any, in the contract which justifies you in the preparation of this theoretical account on page 5, in deducting from the collateral received the overdues charged back?

A. Clause 2 in Paragraph 4 states that the party of the second part agrees to loan or advance to the borrower on the security of assigned accounts receivable, eighty per cent. (80%) of the net face value of such thereof as he shall approve" that clause shows to my mind that a separation should be made between the accounts of which the party of the second part approves and that the 80% shall be computed only upon the part that he does approve, whereas Clause 4 of Paragraph three takes the same line of reasoning, showing what accounts shall be included in the accounts which he shall approve. In the specimen form that I prepared on page 5 I have included or have used the terms, current collateral to designate such accounts as the party of the second part shall approve and XC and overdue accounts which the party of the second part does not approve. Clause 3 of Paragraph 7, which says "Such liens shall extend to all the assigned accounts receivable" and Paragraph 4, which says, "All of the accounts receivable which the party of the second part shall not include in the total of accounts upon which the amount of the loan is based, and the withdrawn accounts, shall be held by him as collateral to the loan, and shall be collected by him and he shall account to the borrower therefor." To my mind 3812 3813

3814 that justifies the inclusion of the XC's as part of the collateral which Doekendorff held.

Q. Referring to the theoretical computation on page 5, let us take the first item, $100,000 as the collateral on hand at the beginning of that day. Let us assume that that excluded the XC's and overdues; let us assume that the amount of overdues charged back on that day was $4,500.

A. You mean the amount that was charged back on that date?

Q. Yes. I am taking the same figures that you have in your report.

A. Yes, sir; but you didn't use the same terms.

3815 Q. Also, let us assume that the new accounts received on that day amounted to $10,000, excluding the XC's; would it not be perfectly consistent with the contract to set up this transaction in this way—Collateral received, current collateral, excluding XC' and overdue, $100,000—

A. That is the balance at the beginning.

Q. Balance at the beginning, $10,000, new accounts received, less $4,500 charged back, making $5,500, balance on hand which is added to the balance at the beginning of the day, excluding XC', making a total of $105,500?

A. For the purpose of showing the current col-

3816 lateral on hand at the end of the day, the result would be the same.

Q. Does the theory of the account as I have set it up, differ from the theory on page 5?

A. I think so, because you are assuming that the overdue collateral is to be deducted from the current collateral which, being a legal conclusion, I don't care to testify to.

Q. In other words, my setting up of the figures deducts the overdues from the current collateral received that day, excluding the XC's?

A. I don't find anything in the contract—

Q. That is the criticism you make of my setting 3817
up?

A. I don't find anything justifying that deduction, but the ultimate result would be the same.

Q. Your interpretation of the contract is that the overdues should be deducted from the collateral on hand?

A. Yes, sir.

Q. Whereas, under my own interpretation, they are deducted from the new collateral which was being received from time to time from the Schwab-Kepner Company; that is the difference, isn't it, between the two theories?

Mr. Cohen: Objected to upon the ground 3818
that there is nothing to justify any such hypothesis or any theory that the new collateral was received in substitution, there is no similarity of amounts and no evidence of that kind has been submitted anywhere.

Objection overruled.

Question read.

A. I think that is correct, yes, sir.

Mr. Wolf: I think that we will suspend now and let Mr. Cohen put in his evidence of the system to which Mr. Stern has testified. 3819

Mr. Cohen: I do not put in any evidence. I produce what you have called for.

By Mr. Cohen:

Q. Have you here now any specimen ledger cards and a specimen bank sheet such as you saw when you made your inspection?

A. Yes, sir.

Q. And does that specimen sheet and specimen ledger card furnish you with the same information that you got from the examination of speci-

3820 men sheets and specimen cards in Dockendorff's office?

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant and calling for a conclusion of the witness.

Master: It seems to me the question should be as to whether these specimen sheets show the manner of making entries that he found upon his inspection of the ledger cards and bank sheets.

Mr. Cohen: I accept your Honor's suggestion and ask the question in that way.

3821 A. Yes, sir.

Offered in evidence.

Two specimen cards and one specimen sheet received in evidence and marked Exhibits P1203, P1204 and P1205 respectively, May 12th, 1911.

Mr. Wolf: Does your offer include the entries on the papers?

Mr. Cohen: Not for the purpose of showing anything as to facts but solely for the purpose of showing that entries are made in the manner thereon indicated.

Mr. Wolf: We object upon the ground
3822 that it is incompetent, immaterial and irrelevant, not binding upon the Trustee and not properly proven.

Objection overruled.

Mr. Wolf: I understand that they are received merely for the limited purpose which Mr. Cohen has stated?

Master: Yes.

Exhibits P1203 and P1204 read as follows:

Exhibit P1203 and P1204, Bank Sheet.

Date	Schedules	Collateral in full		Collateral Less ... %	J. E. Dockendorff, No. ... Collections				Loan Account		Loan Account Daily Balances
					Dr. Checks Drawn	Cr. 80% of Collateral	Amount to Cr. J. E. D. No. ...	Full amount of Collections	Dr. 80% of Collections	Cr. 80% of Collateral	

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Exhibit P1205 reads as follows:

Exhibit P1205. Ledger Card.

"Name _____ No. _____

Rating _____

Address _____

Limit $ _____

Date	M	Lender	Invoice	Amount	Payment	Date	Remarks

By Mr. Wolf:

3829

Q. Referring to Exhibits P1203, P1204 and P1205 of this date, will you please point out any method of making the entries contained in these sheets which assisted you in coming to any conclusion with respect to the overdues?

A. The red ink figures in the upper section of the space for payment on the ledger cards indicated to me that the account had been charged back, the fact that blank spaces were left open indicated that the account was still open and the fact that the blank spaces were in some cases filled in subsequently in black ink indicated that the account had been liquidated.

3830

Q. Is there anything on the ledger cards to indicate how or in what method the account had been liquidated?

A. You mean as far as the black ink entries are concerned?

Q. As far as any entries are concerned.

A. The black ink entries came from the remittance sheets showing the receipts, as receipts, or merchandise returned.

Q. How do you know that?

A. By the explanations offered to me and by an examination of the remittance sheets.

Q. Explanations offered to you by whom?

3831

A. By Mr. Dockendorff.

Q. Do you swear that you examined the remittance sheets in order to verify that?

A. No, just for the purpose of verifying the practice.

Q. How much time did you spend altogether in examining the remittance sheets?

A. Oh, not very much.

Q. Did you spend five minutes?

A. Oh, yes.

Q. Twenty minutes?

A. I spent altogether in Mr. Dockendorff's office, I guess the greater part of two days.

3832 Q. I asked how much time you spent in examining the remittance sheets?

A. Just a few minutes to verify the system.

Q. Did your entire examination consume more than twenty minutes?

A. I don't think so.

Q. Do you know how many remittance sheets there are?

A. No, sir.

Q. Do you know how many entries are contained on them?

A. I have an idea, there was a remittance sheet every day, depending upon the size of the account.

3833 Q. How did you know what the red ink entries meant upon those cards?

A. The same answer will apply, information furnished me which I verified and compared.

Q. Furnished by Dockendorff?

A. Yes, sir.

Q. Compared with what?

A. Entries upon one or two of these cards with the overdue charge slips.

Q. The pink slips?

A. Yes, sir.

Q. Did you examine all the pink slips?

A. Oh, no.

3834 Q. How long did you spend in examining the pink slips?

A. Just verified a few transactions.

Q. How long did that consume altogether?

A. Not more than five or ten minutes.

Q. How did you know that the items under the column marked amount on these ledger cards represented merchandise returned or cash remittances?

A. I didn't say that they did.

Q. What do you understand that the items under the column marked amount represent?

A. They represent the invoice.

Q. They represent payment of the invoice, don't they? 3835

A. Those under the column payment represent the payment, the items under the column amount represent the amount of the invoice.

Q. The column headed payment refers to the amount of payment under the invoice?

A. Applying against the invoice.

Q. Take the ledger card I hold in my hand, Exhibit P1203, the item in February, $30.15, is the amount of the invoice and the amount under payment in red ink is $30.15, and the date is April 17th, also in red ink, does that mean that that was overdue?

A. Yes, sir. 3836

Q. How did you know that that payment on that overdue was made as a cash remittance or return of merchandise?

A. I don't know; I don't think it was.

Q. How was it paid?

A. This account apparently has not been paid at all. The red ink merely shows that it has been charged back as an overdue.

Q. And doesn't the entry under the column marked payment in the column marked payment indicate that it has been paid?

A. If it were in black ink it would. 3837

Q. That is only where it is in black?

A. Yes.

Q. The fact that under the column marked payment there is a red ink entry means that that account is still open and unpaid?

A. Yes, sir.

Q. Is there any entry in that ledger card of the payment or liquidation in any manner of an overdue account?

A. Yes, sir.

Q. Which item?

A. $260.40.

3838 Q. And the fact that under the column marked payment there is $260.40 and under the date column a red ink entry shows that it was an overdue?

A. An overdue charged back November 21st.

Q. And the fact that there is a black ink entry shows that that overdue payment was liquidated on December 31st?

A. On December 31st, yes, sir.

Q. How do you know that entries of that kind which were liquidated, that is, overdues or charge backs which were liquidated were liquidated by cash remittance or merchandise returned and not
3839 in any other way?

A. The statements made to me and the comparison with the remittance slips.

Q. Statements made to you by whom?

A. By Dockendorff.

Q. And the remittance sheets, is that right?

A. Which were verified by reference to the remittance sheets.

Q. What is there in the remittance sheets in evidence which indicated to you that that was the case? I wish you would read the entries on the remittance sheets which would indicate that?

A. The fact that these corresponding items
3840 were entered on the remittance sheets.

Q. What is the precise wording of the entries on the remittance sheets?

A. The name of the customer and the amount of the invoice and the amount actually received or the amount that was returned.

Sworn to before me this
12th day of May, 1911.

Adjourned to Wednesday, May 17th, 1911, at 10.30 A. M.

UNITED STATES DISTRICT COURT, 3841

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, as Special Master, at No. 165 Broadway, New York City, on Wednesday, May 3842
17th, 1911, at 10.30 A. M.

PRESENT:

JULIUS HENRY COHEN and GIRARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and GARRARD GLEN, Attorneys for Trustee.

ALFRED J. STERN, recalled.

Examination by Mr. Wolf:

Q. Mr. Stern, in your report on page 3 you certified that you had examined the method of treating the overdues by Mr. Dockendorff, is that not cor- 3843
rect?

A. I stated that, yes.

Q. Did you examine the method of treating the overdue accounts by Mr. Dockendorff?

A. Yes, sir.

Q. Now, will you kindly tell me in what book, record or document of Dockendorff's that you saw you discovered the manner in which he treated the overdues?

Mr. Cohen: Objected to upon the ground

3844 that it appears from the same sentence which Mr. Wolf quotes that the witness relied upon the testimony in this proceeding as indicating the method of treating the accounts by Dockendorff.

Overruled.

Mr. Cohen: I object upon the further ground that the question assumes that the witness saw books, documents and papers indicating the method.

Objection overruled.

A. I don't know that I discovered it from an
3845 examination of those books. I stated that I examined the books and other matters and that as a result of that examination I formed my opinion of the way these overdues were treated. I can outline my examination for you.

Q. Did you discover in any book, record or document of Dockendorff any method adopted by him with respect to the overdues?

Mr. Cohen: Same objection.

Overruled.

A. I found there was a method of treating overdues by Dockendorff which helped to form—which
3846 served as part of the basis of my opinion.

Q. Did you discover any entry or method of entry in the books, records or documents of Dockendorff respecting his method of treating the overdues?

A. Yes, sir.

Q. Did those entries in part lead you to the conclusion at which you finally arrived with respect to the treatment of the overdues?

A. They reinforced the conclusion which I had already reached as a result of reading the contract, and to that extent they did.

Q. Will you kindly tell me the books, records and documents of Dockendorff that you examined, naming them, which showed the method of treating the overdues by Dockendorff? 3847

A. The so-called charge back slips, the ledger cards and the remittance sheets.

Q. Now, do those papers show the method adopted by Dockendorff with respect to treating the overdues?

A. To my mind they do.

Q. What do the charge back slips show?

A. Taking the thing, of course, as an entirety?

Q. I am taking those things to which you have referred separately and I ask you as I have asked you several times, whether or not you discovered anything in any of the books, records or documents of Dockendorff that show the method of treating the overdues by Dockendorff? 3848

A. I have answered that yes, haven't I?

Q. And you said that you found the method of treating the overdues set forth in the charge back slips and the ledger cards and the remittance sheets?

A. Yes, sir.

Q. What did you see in the charge back slips respecting the treatment of the overdues?

A. The charge back slips only formed a part of the chain, they contained a list of the overdues charged back which were posted from there to the ledger cards. 3849

Q. In other words they simply said I charge back such and such an account for such and such an amount?

A. That is my recollection.

Q. Didn't show anything more?

A. Outside of the names of the accounts and the amounts, of course.

Q. Nothing in addition to that?

3850 A. I don't think so.

Q. What did the ledger cards show that wasn't on the charge back slips?

A. The ledger cards show the manner of treating the accounts and the fact that the charge back is there, listed opposite the accounts, leaving the account, however, still open.

Q. What do the ledger cards show with respect to the method of treating the charge backs that is not shown on the charge back slips?

A. It shows the manner of entering and making a notation of the charge back, but still leaving the amount of the invoice open on the card.

3851 Q. What did it show with respect to the manner of charging back the overdues?

A. I think you have already covered that. The overdue is entered in red in the upper space of the credit side.

Q. From what were the entries on the ledger cards made?

A. As I understood it the original charge was made from the certificate of indebtedness, the red ink entry from the charge back slip and the black ink entry from the remittance sheets.

Q. Was there anything on the ledger cards that showed anything with respect to the charge backs

3852 which was not shown on the charge back slips beyond the fact of whether it was open or had been paid?

A. Except insofar as it showed that the account was still open on Dockendorff's card I don't think there was anything.

Q. So that in order to trace that charge back, the charge back slip showed the name of the account and the amount of that charge back, is that correct?

A. Yes, sir.

Q. And only that?

A. That is my recollection. 3853

Q. And the only thing shown on the ledger cards in addition was whether or not the account had been paid after it was charged back, or whether or not it was still open?

A. On Dockendorff's cards?

Q. Yes.

A. Yes.

Q. That is correct, is it not?

A. Yes, sir.

Q. What was shown on the remittance sheets with respect to the charge backs?

A. The ultimate liquidation of the accounts in case they were liquidated. 3854

Q. In other words it would show that a certain check was received on account of an account which you could determine from other entries, had been charged back?

A. From the ledger cards.

Q. That was all that was shown on the remittance sheets with respect to the charge backs?

A. I think so.

Q. Was any entry made on the ledger cards from the remittance sheets beyond the fact of the payment of the charge back for overdues?

A. When you say payment you include merchandise payments?

Q. Yes. 3855

A. I think not.

Q. Will you kindly tell the Referee how from those records and those records alone you could determine the method of treating those overdue accounts by Dockendorff?

Mr. Cohen: Objected to upon the ground that he has not testified that he determined the method from those records alone, he says that he examined the testimony, the

3856 documents in evidence and that the opinion formed from them was reinforced by these.

Overruled.

Question read.

A. Without wishing to testify, Mr. Wolf, that I did form my opinion from those records and from those records alone, the records you have specified indicated to my mind the fact that these overdues were still kept open upon Dockendorff's cards and that if that was so the only purpose that Dockendorff could have in keeping those accounts open was upon the theory that the accounts constituted his collateral and the remittances for those ac-

3857 counts were to come to him.

Q. Well, now, looking at those papers alone, and those records alone, that is, including the charge back slips, the ledger cards and the remittance sheets, could you determine the method adopted by Dockendorff with respect to the deduction of the overdue accounts or the charge back accounts from the collateral received either that day or on hand at the beginning of that day?

A. I don't know that such is the fact, I think your question assumes a conclusion.

Q. I call your attention to the specimen day's transaction on page 5 of your report and I call

3858 your attention to the fact that you have deducted the overdues charged back from the total collateral received or on hand that day, excluding the XC's and overdues.

A. Yes, sir.

Q. Now, I ask you whether there was anything that you saw on these books or records of Dockendorff that justified such a statement as to the method of treating the overdues?

A. I think so, the entire question, to my mind, is just this as to whether—

Q. Now, wait a moment. 3859

Mr. Cohen: I object the witness should be allowed to finish his answer.

A. (continued)—as to whether the charge backs were part of Dockendorff's collateral, whether if they were part of Dockendorff's collateral they were to be considered as being included in the current collateral upon which the amount of the loan was computed or not; the opinion I formed was that they were Dockendorff's collateral but not to be included in the current collateral upon which the amount of the loan was computed.

Mr. Wolf: I move to strike out the answer. 3860
Motion allowed.
Question read.

A. The difficulty I have in answering that is this, that the records to which you refer, as I understand it, are merely the charge back slips, the ledger cards and the remittance sheets, and these records of themselves do not—taken by themselves do not concern themselves with the question of the distinction between the current collateral upon which the amount of the loan is computed and the non-current collateral.

Referee: Then from these records alone 3861
you didn't find any records justifying this treatment of the overdues in the specimen day's transactions?

A. That is correct.

Q. Now, I ask you whether you saw any other books, records or documents of Dockendorff which justified the deduction of the overdues from the current collateral, and if so, the names of the books, records and documents of Dockendorff.

A. The bank sheets.

3862 Q. Anything else.

A. Not that I now recall.

Q. Tell me a specimen of a transaction that you saw on the bank sheets which justified the deduction of the overdue charged back from the current collateral as shown in the specimen days transaction on page 5?

A. The fact that the overdues charged back were withdrawn from the collateral at the bank.

Q. In other words the bank sheets showed that when the account became due and was not paid within a certain number of days after maturity the bank which had this account pledged with
3863 it transferred the same back to Dockendorff and Dockendorff took them up, is that correct?

A. Without binding myself to any legal conclusion—the proposition is that Dockendorff paid the amount of these accounts to the bank and these accounts were then deducted from the collateral that the bank held upon the bank sheets.

Q. And that account was then taken out of the bank, was it not?

A. Presumably so, but that is a matter beyond the record.

Q. Was there anything else shown on the bank sheets that justified your deduction of the over-
3864 dues from the current collateral?

A. I think not.

Q. I call your attention to the specimen day's transaction appearing on page 5 and page 6 of your report. I call your attention to the fact that on page 5 you have deducted the overdues from the collateral received excluding the X4', that is the current collateral, that is correct, is it not?

A. From the total of the current collateral on hand.

Q. Now, from what have you deducted the overdues on page 6 of your report?

A. I do not understand that question at all. 3865

Q. Have you deducted the overdues from the current collateral on page 6 of your report?

A. I have deducted the loan value of the overdues from the total previously shown so as to obtain the increased loan value as the result of the day's transaction.

Q. Isn't it the fact that the overdues in the transaction on page 6 are deducted from the collateral received that day?

A. Why, page 6 is only a method of computation.

Q. Well, the method of computation is that the charge backs are deducted from the collateral received that day, is that not the fact? 3866

A. I wouldn't express it in just those terms. I would say that the first three items represent an increase in the loan value of the collateral, whereas the last item represents the decrease.

Q. The increase is what?

A. $9,900, all together.

Q. What does that represent, the collateral received that day?

A. No, 80% of the current collateral received that day plus 20% on the collections of current collateral and 100% of the collections on XC and overdues. 3867

Q. Now, let us reduce the transaction on page 6 to the simplest form—

Mr. Cohen: Objected to upon the ground that the statement purports to be the simplest form. I submit that Mr. Wolf has no right in his question to characterize the witness's testimony.

Q. (continued):—supposing that on a certain date $10,000 of collateral is received from the

3868 Schwab-Kepner Company excluding XC and that on that date $1,500 was charged back, what would be the amount warranted by the day's transaction?

A. It depends upon the other factors entering into the day's transactions.

Q. Supposing there were no other remittances received that day; suppose that the total transaction on a given day was the receipt by Dockendorff of $10,000 of collateral excluding XC and overdues charged back amounting to $1,500, what would be the amount of advance warranted by the day's transaction?

3869 A. $1,400.

Q. Now, will you show how that would be figured?

A. I have shown how it is figured.

Q. Show it according to the specimen day's transaction on page 6.

Mr. Cohen: Objected to because it does not appear that it is according to page 6.

Objection sustained.

Q. According to the specimen day's transaction on page 6 how much of an advance would be warranted by the day's transaction—$10,000 col-
3870 lateral received and $1,500 charged back?

Mr. Cohen: Same objection.

Objection sustained.

Q. Now, Mr. Stern, you have said that on $10,000 of collateral received on a given date and $1,500 charged back, and assuming those to be the only transactions, the amount warranted by that day's transaction would be $1,400. Is that correct?

A. Yes, sir.

Q. How would you figure that?

A. I would figure that by taking 80% of the cur- 3871
rent collateral received—

Q. That would be $8,000?

A. (continued):—the current collateral received being $10,000. The receipt of this collateral increases the loan value of the collateral by 80% of the amount or $8,000. The fact that $1,500 worth of overdues are charged back reduces the amount of current collateral by $1,500 and reduces the loan value of the total collateral on hand by $3,600 which is 80% of the $1,500. Therefore there is an increase in the loan value of $8,000 by the first transaction and a decrease of $3,600 by the second so that the net result of the day's transaction is 3872
that the loan value of the collateral on hand at the end of the day is $4,400 more than it was at the beginning of the day and therefore would warrant an advance of $4,400. These details are all covered entirely in the report.

Q. Referring to the transaction on page 6, I ask you whether or not the effect of the specimen day's transaction shown on page 6 of your report is to deduct the overdues charged back from the collateral received that day?

A. No, the purpose of the transaction is merely for the purpose of showing the increase in the loan value of the collateral and the decrease in the loan 3873
value of the collateral. The purpose is not to deduct the overdues from the current collateral received, if that is the legal conclusion which form, I do not see that I can take any objection to your trying to prove it but I do make objection to your trying to prove it from my testimony after I have already made myself clear.

Mr. Wolf: I move to strike out the answer.

Motion denied.

3874 Q. Mr. Stern, in what respects do the specimen day's transactions on pages 5 and 6 differ with respect to the overdues charged back, if they do differ at all?

A. There is no difference, the only purpose of page 6 was to show, as it states, "The amount of the advance warranted each day may be computed in a simpler manner," it is merely a method of computation.

Q. The result shown by the computation on page 5 shows the amount warranted by the days' transaction?

A. Yes, sir.

3875 Q. And the specimen day's transaction on page 6 shows precisely the same thing?

A. Yes, sir.

Q. Which method, the method adopted on page 5 or page 6, did you find adopted in the books, records and documents of Dockendorff?

A. Neither.

Q. Now, assuming, Mr. Stern, that the overdues charged back on the specimen day's transaction had been paid by the Schwab-Kepner Company to Dockendorff, what, if any, charges would have been made in the specimen day's transaction?

A. You mean in this transcript?

3876 Q. Yes, page 5?

A. The only change that would have been made would be the entry of such items as were paid under the loan account, thereby decreasing the charge to the loan account.

Q. Supposing on the specimen day's transaction appearing on page 5 the overdues charged back $4,500 were on that day paid by the Schwab-Kepner Company what charge would you make in your specimen day's transaction, if any?

A. The $4,500 would be entered as collateral from Schwab-Kepner Company and would have

gone under the collections increasing the item there of $7,500 by $4,500 increasing the balance of the loan account and warranting an increase of $4,500 that day. 3877

Q. Would you have deducted the $4,500 charged back from the total collateral received?

A. I would not—just a moment, would I have made any different entry up above?

Q. Yes.

A. No, the entry above would stay the same way.

Q. The difference would have been in the loan account?

A. Yes.

Q. Take page 6, what change, if any, would be made there? 3878

A. Whatever additional moneys were received from Schwab-Kepner Company would have gone to decrease their loan and therefore warranted an advance of 100% more, it would have warranted an additional advance.

Q. Assuming that the overdues charged back in the specimen day's transaction appearing on page 5 instead of having been paid in cash were taken up by the substitution of new accounts, what changes would have been made in the specimen day's transaction on page 5?

Mr. Cohen: Objected to upon the ground that there is no evidence in the record showing any substitution of accounts. Substitution indicates a re-assignment of the accounts to the Schwab-Kepner Company and the transfer of a new account by the Schwab-Kepner Company and there is no such evidence in this case. 3879

Objection overruled.

Question read.

A. You mean to infer by that question that the

3880 accounts became the property then of the Schwab-Kepner Company?

Q. No, I am not assuming anything on that subject. Take your specimen day's transaction appearing on page 5—on that date Dockendorff charged back to the Schwab-Kepner Company overdues $4,500; now, assume that on that date the Schwab-Kepner Company gave to Dockendorff $4,500 of new account in payment of the $4,500 overdues charged back, what changes, if any, would that have made in the specimen day's transaction appearing on page 5?

3881 Mr. Cohen: Objected to upon the ground that there is no evidence to warrant that assumption.

Master: There is no evidence to warrant that assumption and I shall therefore sustain the objection.

Q. Mr. Stern, referring to the specimen day's transaction appearing on page 5 and assume that on that date Dockendorff charged back to the Schwab-Kepner Company overdues of $4,500, assume further that on that date the Schwab-Kepner Company transferred to Dockendorff in payment or substitution of the $4,500, $4,500 worth of new
3882 collateral but that Dockendorff retained the $4,500 charged back, what if any changes would have been made in the specimen day's transaction?

Mr. Cohen: Objected to upon the ground that it assumes facts not in evidence.

Objection sustained.

Q. Mr. Stern, in the specimen day's transaction appearing on page 5 of your report you have assumed that the overdues charged back were paid either in cash or collateral.

Mr. Cohen: Objected to upon the ground stated before as being an indirect method of obtaining the same testimony and upon the ground that the report speaks for itself and shows that the witness made no assumption. 3883

Overruled.

A. You mean as of the date of the charge back?

Q. Yes.

A. No, sir.

Q. If it turned out to be the fact that the $4,500 overdues charged back were paid in cash or paid by a substitution of new security would a change be made in your report appearing on page 5. 3884

Mr. Cohen: Objected to upon the ground that there is no such evidence in the case.

Objection sustained.

Mr. Wolf: I would like to have the witness answer that question yes or no without stating what the change would be, for the purpose of my record in case the record shows that there has been such testimony.

Mr. Cohen: I object to that.

Master: I will allow the record to stand as it is. You haven't called my attention to the testimony. 3885

Mr. Wolf: In order that we may have the record straight, we contend that it has been shown in the record, that Mr. Kepner has testified that the overdues were paid by substitution of new collateral for the old collateral charged back, that was a method adopted after a certain time and I think covering the period in question, and that the contract itself calls for payment of the overdues by the Schwab-Kepner Company and that the pink charge slips show that the

3886 payment must have been demanded and made by the Schwab-Kepner Company of the overdues charged back; we contend that that is shown and we want to examine this witness on the assumption that that is shown to see what change would have been made if he had had those changes in mind. We understand that your Honor declines to let us do that?

Master: Unless you call my attention specifically to the testimony to which you refer the objection to this line of testimony is sustained.

3887 Q. Mr. Stern, did you find any change in the method of bookkeeping adopted by Dockendorff with respect to the overdues charged back?

A. You mean at various periods?

Q. Yes.

A. I only examined the last method in use.

Q. Over what period of time did you examine?

Mr. Cohen: Objected to upon the ground that the witness has testified merely to his inspection of the same, and not an examination of the books of account of Dockendorff.

3888 Objection overruled.

A. The examination I made was only for the purpose of examining the system in use, but I understood, however, that that system had been in use since August 1st.

Mr. Wolf: I move to strike out "that system had been in use, etc."

Motion allowed.

Q. Mr. Stern, you have testified that you made an examination of Dockendorff's books to ascer-

tain the method adopted by him with respect to the overdues charged back, is that correct? 3889

A. Yes, sir.

Q. Over what period of time did you examine the records of Dockendorff in order to ascertain the method adopted with respect to the overdues?

A. Over no particular period of time.

Q. What were the dates of the books or the entries in the books that you examined?

A. I don't recall the dates, I think they were the current books.

Q. Was it before or after August 1st, 1910?

A. What do you mean, my examination or the dates? 3890

Q. The dates of the entries.

A. Some of them may have been before and some after. I guess the majority, the vast majority of them were after.

Q. Did you find any difference in the entries in Dockendorff's books with respect to the method of charging the overdues?

A. No, sir.

Q. Mr. Stern, what do you understand is the difference between the XC accounts and the overdues charged back?

A. As I understand it, the XC accounts are accounts of which Dockendorff did not approve at the time they were received and which were therefore taken into the computation as having no loan value, and the overdue accounts are accounts which were charged back a number of days after they had become due, and which thereupon were taken into the computation as having no loan value. 3891

Q. What do you understand the letters XC to mean?

A. You mean what the initials stand for?

3892 Q. Yes.

A. I don't know.

Q. Did you inquire of Dockendorff what the letters XC meant?

A. My recollection is that I did.

Q. What did he tell you?

A. Of course this is only recollection—that they represented the accounts of which he did not approve, and didn't compute 80% of for the purpose of making the loan.

Q. Were you informed that the leters XC meant excluded collateral.

A. No, sir.

3893 Q. Did you ask Dockendorff if that was what the two letters meant?

A. No, sir.

Q. As an expert accounttant can you tell whether or not an accounting of a banker such as Dockendorff in dealing with a client whether the letters XC have any particular meaning?

A. No, sir.

Q. Had you ever in your experience as an expert accountant seen those letters used by a banker in dealing with his client?

A. No, sir.

Q. Had you ever seen the letter X used in an
3894 account between a banker and his client?

Mr. Cohen: Objected to as immaterial. Overruled.

A. No, sir.

Q. In your experience as an expert accountant can you tell what is the usual designation by which a banker designates excluded collateral?

A. No, sir.

Q. Now, I call your attention to the specimen day's transaction appearing on page 6, why have you grouped the collateral received, XC and over due collateral, in one item?

A. Because in both instances the loan value was increased by 100% of the amount of such accounts that were paid, they might just as well have been stated separately. 3895

Q. Assuming that the amount loaned by Dockendorff on the overdue collateral had not been repaid to him by the Schwab-Kepner Company, would the loan value have been increased by 100% of the collections on the overdues?

A. I don't understand the question.

Q. Mr. Stern, why was it that the Schwab-Kepner Company was entitled to 100% of the amount collected on the overdue collateral?

Mr. Cohen: Objected to upon the ground that it calls for the legal conclusion of the witness. 3896

Objection sustained.

Q. Mr. Stern in your report on page 6 you have stated, have you not, that the Schwab-Kepner Company was entitled to 100% of the collections on overdue collateral in addition to its loan?

A. No, I have stated that the amount warranted by any day's transactions could be computed by means of a certain computation, and in this computation the overdues that were paid are computed at 100%. There is a distinction—I have tried to make it clear. 3897

Q. In your account on page 6 you have taken the collateral received and said that the Schwab-Kepner Company was entitled to 80% less the XC accounts?

A. All this is a matter of computation on page 6. I again call your attention to the two lines at the head of the page reading, "The amount of the advance warranted each day may be computed in a simpler manner." In other

3898 words by showing this method of computation, I don't mean to convey the impression that each of those items represents the legal effect of what was done. If it does I think it is a matter for a lawyer and not for an accountant to take up.

Q. I am not taking the legal effect, I am taking exactly what you did and you have taken the collateral received and said that the Schwab-Kepner Company was entitled to a loan of 80% of that excluding the XC accounts.

A. No,—in explaining this whole proposition in the report I have said that the $10,000 increased the amount of current collateral by $10,000, and
3899 increased the loan value by $8,000. In other words, I don't want my answers to appear as if I were discussing the specific transaction of the $10,000, because I am only taking it in so far as it affects the previous value.

Q. The loan value of the specimen day's transaction increased $8,000?

A. Yes, sir, you mean taking just that one item into consideration.

Q. Yes. And also, looking at page 6, the loan value increased by 20% of the collateral, the current collateral excluding XC and overdue?

A. Yes, sir.

3900 Q. And the loan value also increased by 100% of the collections received on overdue collateral?

A. And XC.

Q. Is that correct?

A. Yes, sir.

Q. Now, I ask you why it is—you tell me, as an expert accountant, why it is that the loan value increased by 100% of the amount collected on the overdues?

A. Because the XC and overdue collateral are not treated as current collateral. The loan value

is determined by taking 80% of the current collateral and the XC and overdue collateral are taken in as having no loan value, therefore, when the XC and overdues are paid—when payment was made on XC and overdue collateral, the loan value of the collateral is not affected because these accounts have gone into the calculation as of no loan value, therefore, when they are liquidated the loan value still remains the same, but the amount of the actual loan is reduced by the amount of the payment, and therefore comparing the loan value with the amount of the actual loan, it shows that the difference will be the amount warranted. 3901

Q. Would the loan value according to your computation on page 6 have increased by 100% of the overdue collections if Dockendorff's loan against that overdue collateral had not been paid? 3902

Mr. Cohen: Objected to upon the ground that it assumes that a loan was made against that particular collateral, and there is no evidence in the case that any loan was made against any particular collateral.

Objection sustained.

Q. When the $500 was originally transferred to Mr. Dockendorff which subsequently was $500 let us say overdue collateral charged back, when that was originally charged to Dockendorff did he advance money to the Schwab-Kepner Company on that? 3903

Mr. Cohen: Objected to upon the ground that it calls for the witness's testimony as to the actual fact and the witness was not offered for that purpose.

Overruled.

3904 A. My understanding is that the $500 went to increase the current collateral and to increase the loan value of the current collateral, and therefore Mr. Dockendorff advanced the money upon the entire amount of collateral he had at that time.

Q. How much did the contract require him to advance upon the collateral he had at that time?

Mr. Cohen: Objected to upon the ground that it calls for the witness's legal construction of the contract.

Objection sustained.

3905 Q. Turning to the specimen day's transaction, Mr. Stern, appearing at page 5 of your report; why have you added the $500 collections on overdue collateral to the $7,000 of collections on the current collateral?

A. Because, Mr. Wolf, they were both collections and both tended to reduce the amount of the loan.

Q. By what extent have you computed the collections on overdue collateral to increase the loan value?

A. I don't know in what sense you are using the term loan value. It can either represent the loan value of the collateral or according to your ques-
3906 tion now it may represent the amount warranted by the day's transaction. The loan value is not affected by the $500 received on 'X' and overdue accounts but the amount of the loan is reduced and therefore the amount of advance warranted is increased.

Q. The amount of advance warranted by the day's transaction is increased by 100% of the amount collected on the overdue collateral, is it not?

A. Yes, sir.

Q. And the same is true of the 'X' accounts?

A. Yes, sir.

Q. Would that be true if the loan which Dock-

endorff had against the overdue collateral at the time of its receipt by him had not been paid off? 3907

Mr. Cohen: Objected to upon the ground that it calls for the witness's conclusion and further upon the ground that it assumes that Dockendorff had a loan against specific collateral as distinguished from other collateral.

Objection sustained.

Q. Referring to the specimen day's transaction appearing on page 6 do you find support for that in the books, records or documents of Dockendorff, if so which? 3908

Mr. Cohen: Objected to upon the ground that it has already been covered.

Objection overruled.

A. I have already answered that, Mr. Wolf, I have said that neither 5 or 6 was supported by any way of keeping books by Dockendorff. Dockendorff's books merely indicated how certain items were treated and pages 5 and 6 is my theory of the transactions between Dockendorff and the Schwab-Kepner Company, page 5 being the theory and page 6 being a simpler method of computation based upon the contract, the testimony and confirmed by an examination of Dockendorff's books as to the nature of certain of the accounts. 3909

Q. You have said on page 2 of your report that in your opinion the report of Suffern & Son does not purport to be a full and complete report of the matters covered therein, what do you mean by that?

A. Just what I have stated, do you want me to read the report from there on?

Q. Can't you explain it a little more definitely?

A. There is no use of trying to explain, per-

3910 haps by reading the next few pages of the report—and you can ask for particulars.

Q. Do you mean by that that the report of Suffern & Son is not a full and complete report of the exhibits in evidence?

A. No, I don't think I had that in mind so much

Q. Do you wish to admit that it is a full and complete report of the exhibits in evidence?

Mr. Cohen: What exhibits do you refer to?

Mr. Wolf: All the exhibits in evidence.

Mr. Cohen: I ask that counsel be directed to state whether he refers only to
3911 computation and figures or whether he refers as well to conclusions and deductions and also to such expressions as "Paid by Schwab-Kepner Company's checks" that appear in the report.

Master: I think the question is sufficiently clear, Mr. Cohen.

A. I will have to refresh my recollection on that. I think, without accepting the computation and conclusions of the Suffern report that it endeavored to be a complete report of the exhibits in evidence.

Q. You say endeavored to be, do you think that
3912 was the case?

A. I say, subject to exceptions.

Q. Have you any exceptions in mind at this time?

A. What I mean is this, Mr. Wolf, that granting what Suffern & Son say that the report is based upon certain exhibits which either had been or were subsequently put in evidence, I think the effort was conscientiously made by Suffern & Son to present a complete report.

Q. Do you or do you not admit that the report is a full and complete report on the exhibits in evidence?

Mr. Cohen: I object, the witness's re- 3913
port shows the exceptions and qualifications he makes.

Overruled.

Question read.

A. That is rather a broad statement. Fullness and completeness can only be determined from the purpose for which it was compiled. There may be any number of matters not covered. I say that considering the exhibits in evidence and considering the limitations which they made, in perfect good faith they tried to present a complete computation of the exhibits which they examined.

Q. You say here, and I am addressing myself to 3914
your criticism that the report does not purport to be a full and complete report—do I understand that your criticism is addressed to the fact that it is not a full and complete report of the exhibits not in evidence?

A. Well, I might even go further than that, Mr. Wolf, and say I don't consider it a full and complete report in view of the testimony that has been given.

Q. What testimony?

A. In this proceeding.

Q. I wish you would call it to our attention.

A. Such a thing, for example, as the $120,000 of 3915
cancellations.

Q. Where do you think that the report on the exhibits in evidence is not a full and complete report on that?

Mr. Cohen: Objected to because the question now takes in the words on the exhibits in evidence which were not in the previous question.

Question withdrawn.

Q. Is there any other testimony which you think was omitted?

3916 A. The testimony with reference to the treatment of overdues.

Q. Anything else?

A. With reference to the treatment of XC accounts.

Q. Anything else?

A. With reference to the releases.

Q. Is that all?

A. I don't know whether that's all, it's all that I recall at the present time.

Q. Now, will you think up during the recess any more testimony that you think was not included in the report?

3917 A. I will.

Q. What testimony did you understand they overlooked with respect to the overdues?

A. The testimony of Dockendorff and Williams and perhaps, I am not sure, Kepner and I might also add the contract which is in evidence.

Q. Now, what do you understand Mr. Williams testified on the subject of the overdues?

A. My recollection is that the testimony was that substantially the overdues remained the property of Dockendorff.

Q. And you understood Dockendorff's testimony to be the same?

3918 A. Yes.

Q. And did you read the testimony of Kepner on that subject?

A. I read it but I have not a clear recollection on it.

Q. Did you understand that he testified that they were the property of Dockendorff?

A. I said that it was very hazy, that I did not recollect it clearly.

Q. How about the XC accounts, what did you understand to be Williams' testimony about them?

A. That all the accounts were assigned to Dock-

endorff, including the XC and that they were re- 3919
tained by him as collateral.

Q. And did you understand that Kepner testified to the same thing?

A. I am not sure as to Kepner's testimony, because I read all the testimony at the same time.

Q. Will you show me anything in the Suffern report that you object to on the question of the way they handled the XC and overdue accounts?

A. Well, Exhibit A, depending on what its purpose is, all mention of XC and overdue—

Q. Do you—

A. I haven't finished yet, it may take a long while. There might be exception taken in Schedule 3920
B, part 1, to the terms "Schedules open for advances," references throughout the report to "Remittances from Schwab-Kepner Company in settlement of accounts receivable charged back;" Exhibit C, objection might be taken to terms "Schedules open for advances," the terms "Total of security account," and deduction made by listing column D "Accounts charged back to Schwab-Kepner by J. E. D." and excluding such items from the collateral account; the use of the term "Balance security account" might also be excepted to; Schedule 1, the term "that were paid by Schwab-Kepner Company checks" might be excepted to; Schedule 3 3921
purporting to be a list of "accounts receivable assigned subsequent to August 1st, 1910, that were paid or remained open on November 29th, 1910," excludes any payments on overdue accounts. I think that is all.

Recess taken.

3922 After Recess.

ALFRED J. STERN, examination continued.

By Mr. Wolf:

Q. Are there any other respects, Mr. Stern, which you wish to call our attention to in substantiation of what you have said on page 2 of your report that the report of Suffern & Son was not a full and complete report?

A. I think the matter following that explains it rather thoroughly and if there is anything further I can add I wish you would direct my attention to it.

3923

Mr. Cohen: When you refer to the matter following that, do you refer to that part of the report which was excised by consent of counsel?

A. No, sir.

Q. You refer to what is in your report that is in evidence?

A. Yes, sir.

Q. Now, the criticisms that you made before recess, do you wish to have us understand that they are criticisms to the effect that Suffern & Son's is not a full and complete report, or that you take
3924 issue with them respecting certain matters contained in the report?

A. I would say both, Mr. Wolf; that I don't consider it complete and that I take issue with it, and the reason I say that I don't consider it complete is because it seems to me that Suffern & Son had confined their attention to certain evidence, to certain documents only, whereas there are other documents that were available for examination, and to that extent I would say that it is not complete.

Q. Are those documents in evidence?

Mr. Cohen: Now, or at the time the report was made? 3925

Mr. Wolf: Any time.

A. I think not, but I think they were in the control of the Trustee.

Mr. Wolf: I move that the answer be stricken out.

Everything after "I think not" stricken out.

Q. Now, you say in your report, "In our opinion, the report in its entirety does not purport to be a full and complete report." Do those words in your report mean anything more than that, in your opinion, Suffern & Son, by an examination of other books, records or papers referred to in their reports, might have made what you call a full and complete report? 3926

A. Not referred to in their papers, you mean?

Q. Yes.

A. That is what I mean.

Q. So that your criticism is that they did not resort to papers not in evidence?

A. The basis of the criticism, yes, sir.

Q. The basis of the criticism that their report is not a full and complete report is that they did not resort to certain papers, books and documents not in evidence; is that correct? 3927

A. Yes, sir.

Q. On page 5 of your report you say, "It is thus seen that the advance warranted by a day's transactions is dependent upon the loan value of the total collateral held at the end of the day and the balance previously advanced against this collateral, and that, on the transactions indicated above, an advance of $6,300 would be warranted"; those statements are based, are they not, on the theory

3928 of accounting set forth in the specimen day's transactions, on page 5?

A. Yes, sir.

Q. And the theory on page 6, respecting the amount warranted by the day's transactions on page 6, is based on the specimen day's transaction at the head of page 6?

A. No, I would say 5, page 6 and the first half of 7, all refer to the same transactions; there is no distinction there.

Q. Now, you say on page 7 that when overdues were charged back the loan value of the collateral was decreased by 80 per cent., but the loan ac-
3929 count itself was not decreased; that is correct?

A. Yes, sir.

Q. Where did you find that set forth in the books, records or documents of Dockendorff?

A. I would say in the bank sheets, because of the fact that when these overdues were charged a check was sent from Dockendorff to the bank, and—

Q. Is that your entire answer?

A. No. In that way reducing the loan value of the collateral.

Q. You have referred to these bank sheets several times in your examination. Do you under-
3930 stand that the Schwab-Kepner Company ever received the bank sheets from Dockendorff?

A. No, sir.

Q. Or that any officer or representative of that company ever saw them?

A. I don't know as to that. They were records kept in Dockendorff's office. The purpose of the records, as I understood it, was for Dockendorff to pay the amounts, not for the purposes of the Schwab-Kepner Company.

Mr. Wolf: I move to strike out the answer.

Motion allowed.

Q. Where do you find anything on the bank sheets that indicates that the loan value of the collateral was decreased by 80 per cent., but that the loan account itself was not decreased? 3931

A. The fact that Dockendorff paid the banks so much money didn't affect the indebtedness of the Schwab-Kepner Company to Dockendorff, but the fact that Dockendorff advanced or sent this money to the bank and that upon this bank sheet a record was kept, showing the loan value of the collateral and the amount advanced against that loan value, indicated to my mind what I have stated.

Q. That referred to Dockendorff's transactions with the banks, did it not, exclusively? 3932

A. Except in so far as you consider Dockendorff's transactions with the banks to be one and the same with Dockendorff's transactions with the Schwab-Kepner Company.

Q. Did you consider them to be the same?

A. I understood that the only record Dockendorff kept was with the banks.

Q. Did you understand that the transactions of Dockendorff with the banks were the same as the transactions with Schwab-Kepner Company?

A. No, but I understood that the record was the same.

Q. Did you see the records of Dockendorff with the Schwab-Kepner Company? 3933

A. Except in so far as we consider the records with the banks as being the records with the Schwab-Kepner Company.

Q. So that all you saw was the records of Dockendorff with the banks?

A. All the information I have.

Q. And you learned that the same relations existed between Dockendorff and the banks as ex-

3934 isted between Dockendorff and the Schwab-Kepner Company?

Mr. Cohen: Objected to on the ground that it assumes a state of facts not shown to exist.

Objection overruled.

Question read.

A. My opinion was that this one record occupied a dual position in serving as a record between Dockendorff and the banks and also between Dockendorff and Schwab-Kepner Company.

Q. Do you know whether Dockendorff had any
3935 agreement with the banks?

A. No, sir.

Q. Did you see any such agreement?

A. No, sir.

Q. Do you know whether there was a verbal agreement between Dockendorff and the banks?

A. No, sir.

Q. Did you ask whether there was a verbal or written agreement between Dockendorff and the banks?

Mr. Cohen: Objected to on the ground that it is incompetent and immaterial.

Objection sustained.

3936

Q. Did you examine to determine what happened when the banks charged back to Dockendorff the overdue accounts?

Mr. Cohen: Objected to upon the ground that there is no evidence that the banks charged back to Dockendorff and further on the ground that it is incompetent, irrelevant and immaterial.

Question withdrawn.

Q. Did you testify this morning that the banks charged back overdues to Dockendorff?

Mr. Cohen: Objected to upon the ground 3937
that the record speaks for itself.

Objection overruled.

A. I think not.

Q. Is it a fact that the banks did charge back the overdue accounts to Dockendorff?

Mr. Cohen: Objected to upon the ground that it is incompetent, irrelevant and immaterial.

Objection sustained.

Q. Where did you find in any books, records or documents of Dockendorff that when overdue and XC accounts were paid that the loan value of the 3938
collateral was not increased but that the loan itself reduced and that that warranted an advance of 100%, or the entire amount received?

Mr. Cohen: Objected to upon the ground that it assumes that that portion of the witness's report was based upon an examination of Dockendorff's books, records and documents whereas it appears from the report that it was based on an examination of the testimony and exhibits in evidence.

Question reframed.

Q. Do you find anything in the books, records 3939
or documents of Dockendorff that when overdue accounts or XC accounts were paid the loan value of the collateral was not increased but the loan itself was reduced and that that warranted an advance of 100%, or the entire amount received?

A. The manner of keeping the books does indicate that in this way, the bank sheets showed the total of the current collateral and that whenever the remittance came in upon XC and overdues these remittances were not entered upon the bank sheets because this collateral was not upon the

3940 bank sheets, therefore the loan value of the collateral as shown by the bank sheets was not affected, was neither increased or reduced, whereas the fact that this money had been received reduced the loan account. I am trying to indicate to you the transaction and to indicate to you what my conclusions were and what the inference that I drew from these things was, whether these entries in themselves were conclusive or whether the entries were merely corroborative of other evidence which I found I am not going into, merely confining myself to your question.

3941 Mr. Wolf: I move to strike out the answer.

Motion allowed.

Question read.

A. I don't think that I can answer it in any other way. If any part of the answer is not responsive—

Mr. Cohen: I submit that the witness is entitled to answer that question by indicating how he found it, the question of counsel is, did you find anything and what did you find. It isn't fair to confine this witness to
3942 an answer yes; it is like an answer yes to the question, "Have you stopped beating your wife?" There are other things besides these documents the witness has examined. If the witness said yes it would seem as though that was all that showed it.

Master: I don't see any reason why it cannot be answered yes or no.

A. I have found entries which indicated it.

Q. What were they contained in, what books, records, papers or documents?

A. Upon the bank sheets.

Q. Anything else?

A. The remittance sheets. 3943

Q. Anything else?

A. No, I think not.

Q. Take the remittance sheets here which are in evidence and call my attention by reading into the record any specimen transaction that you find in the remittance sheets that indicates that when overdue accounts were paid that the receipt thereof by Dockendorff did not affect the loan value of the collateral but that the loan itself was reduced by the amount received and warranted an advance of 100% or the entire amount received?

A. I do not know how else I can answer that question except by repeating what I have said. 3944

Q. Can you read into the record any one or more transaction that indicates that they would be warranted in making an advance of 100% or the entire amount received?

Mr. Cohen: Objected to on the ground that it already appears that the exhibit has to be taken in connection with the others and it is unfair to confine the witness to one paper.

Overruled.

A. I would like to add to my previous answer if I may, the recapitulation or head sheets upon 3945 which the remittances were summarized.

Q. Are they in evidence?

A. I think not.

Q. Now, to repeat my previous question I ask you to read any entry on the remittance sheets which are in evidence showing that when such accounts were paid to Dockendorff he was warranted in making 100% advance on the overdue collections?

A. When the remitances were received a certain part of these remittances representing the current

3946 collateral which the banks had were remitted to the banks and those entries went upon the bank sheets; the bank sheets as I understood it, represented the current collateral and showed the loan value of that collateral. The fact that the XC and overdue accounts, that is the fact that the remittances on the XC and overdue accounts were not remittances to the banks and were not entered upon the bank sheets indicated to my mind that the loan value of the collateral was not affected. The fact that the total amount of remittances was nevertheless received by Deckendorff reduced the loan by that amount and therefore indicated to my
3947 mind, the thing in its entirety, that the loan value of the collateral was not reduced but that the loan itself was reduced.

Mr. Wolf: I move to strike out the answer as not responsive.

Motion allowed.

Mr. Wolf: I would like to have the Referee caution this witness—I ask the Referee to instruct this witness to make his answers responsive to the questions.

Mr. Cohen: I think, if Your Honor pleases, the witness is endeavoring to facili-
3948 tate this inquiry by making his answers fair and I do not think that counsel's criticism is justified.

Master: I think Mr. Wolf's examination is entirely within the province of cross examination and the witness must take the questions as they are put and answer the questions. Mr. Stern does show a tendency to make explanations which he thinks will be more illuminating possibly than a categorical answer, but it is his duty to answer the questions in the manner in which they

are put to him—and you will please try to 3949
do so, Mr. Stern.

Question read.

A. Confining myself to the remittance sheets only, Mr. Wolf, I cannot.

Q. Well, now, the bank sheets, can you give us a typical entry reading the entry into the record which would show that when the overdue accounts were paid Deckenderff was warranted in advancing to the Schwab-Kepner Company 100% of the entire amount received?

A. Taking the bank sheets alone, I cannot.

Q. In order to determine that Deckenderff was 3950
warranted in advancing 100% of the overdue accounts paid was it necessary for you to take into consideration the entries on the bank sheets?

A. As I understand your line of examination you are confining me now to such opinions as I could have formed from the records in Deckenderff's office alone and asking me to dismiss from my mind the testimony and the contract and everything pertaining to it?

Master: This refers now to the entire examination.

A. No, sir, I could have determined it from other 3951
records outside of Deckenderff's office.

Q. Without an examination of the entries on the bank sheets—did the bank sheets help you at all in coming to that conclusion?

A. Only in so far as they reinforced the conclusion I had come to.

Q. And the form of the bank sheets, irrespective of any entries made on the bank sheets reinforced you in the conclusion, is that what you mean to testify to?

3952 A. No, I think I could only consider the bank sheets in connection with the entries that were to be made upon them.

Q. The bank sheets as a form would show nothing?

A. They would show something, yes.

Q. Did they show anything that helped you in making up this report?

A. Yes, they assisted in that respect.

Q. As a matter of fact in making up this report, did you refer to the entries in the bank sheets?

A. Only in so far as finding out the nature of the entries.

3953 Q. The form of the entries?

A. What they purported to represent.

Q. That is the form, isn't it?

A. I have made myself clear, Mr. Wolf, do you consider the two things identical?

Q. What else did you consult to determine that Deckendorff was warranted in advancing 100% or the entire amount received on overdue collections by him from the Schwab-Kepner Company, I mean beyond books, records and documents of Deckendorff?

A. The contract and the testimony.

Q. Now, will you read into the record the refer-
3954 ences to the specific provisions of the contract that justified you in coming to the conclusion that Deckendorff was warranted in advancing 100% of the overdues collected?

Mr. Cohen: Objected to upon the ground that it has already been covered.

Objection overruled.

A. I haven't a copy of the contract before me and my recollection is that the contract provides that the loan value of the collateral shall be 80% of such accounts as Deckendorff shall approve of and likewise that he has the right to deduct from the ac-

counts upon which the amount of the loan is com- 3955
puted certain accounts which have been termed in the testimony charge backs and that the charge backs and the X C accounts shall still remain the property of Dockendorff. Those provisions indicated to my mind the fact that when such overdues were paid inasmuch as those overdues were not included in computing the loan value of the collateral that therefore the loan value was not affected by the payment of such accounts and then when the payment was actually made of those overdues the amount of the loan was reduced by the amount paid.

Q. Why was the loan value not affected by the amount of the overdues and X C's on hand? 3956

A. Because as I understand it the contract provides that they shall not be taken into consideration in computing the loan value.

Q. And you assumed that the contract had never been departed from?

A. Except in so far that I ascertained from the testimony that the Schwab-Kepner Company had not paid for the overdues by their check subsequent to June 16th I think it was.

Q. How had they paid for the overdues charged back prior to the first of June?

Mr. Cohen: Objected to upon the ground that it calls for a summary of evidence al- 3957
ready given by other witnesses and further because it assumes that they paid for the overdues.

Question withdrawn.

Q. Did you understand that prior to the first of June the overdues had been paid by the Schwab-Kepner Company, the overdues charged back?

Mr. Cohen: Objected to as immaterial, irrelevant and incompetent.

Overruled.

3958 A. That is my recollection of the testimony.

Q. Did you verify that by an examination of the books, records and documents of Dockendorff?

A. No, sir.

Q. Did you verify that by investigation, by questioning Dockendorff or counsel?

A. No, sir.

Q. Did you verify it in any way?

A. No, sir.

Q. Did you examine any entries on Dockendorff books, records or documents, prior to the first of June, 1910?

3959 Mr. Cohen: Objected to upon the ground that it is immaterial, irrelevant and incompetent, there is no evidence that he examined any of Dockendorff's books, except in the nature of remittance and collateral sheets.

Objection sustained.

Q. In preparing this report, did you examine any entries on Dockendorff's books prior to the first of August, 1910?

A. I think not, except in so far, Mr. Wolf, in the examination that I made of the system there may have been entries on the documents prior to August 1st, but I didn't devote any attention to it.

3960 Q. Did you notice any change made in the method of keeping the records of Dockendorff with respect to the overdues charged back to the Schwab-Kepner Company?

A. I didn't make any examination for that purpose and therefore—

Q. Did you discover any such thing in your examination?

A. No, sir.

Q. Did you notice any record in any book of account of Dockendorff which indicated that an overdue charged back had been paid by the Schwab-Kepner Company's check?

Mr. Cohen: Objected to upon the ground 3961
that it calls for the witness's testimony as to the contents of books, papers and documents not in evidence.

Objection sustained.

Q. In examining the method of treating such accounts by Dockendorff, did you notice anything that would indicate that any of the overdue accounts had been paid by Schwab-Kepner Company checks?

A. No, sir.

Mr. Wolf: Now in connection with the question that we had up this morning, I 3962
would like to read to you the testimony of Mr. Kepner at pages 482-483-484-485:

"Q. Give us the first general course of business with respect to the charge backs?

A. When an account matured after a certain grace allowed by Mr. Dockendorff, the account was charged back to us and we sent a check to Mr. Dockendorff covering that account.

Q. That was the first general conduct of the business with respect to the charge backs?

A. Yes. 3963

Q. You say you sent a check, whose check did you send?

A. Our check, Schwab-Kepner Company.

Q. On its own bank account?

A. Yes.

Q. For what amount, the amount of the charge backs?

A. For the amount of the collateral.

Q. That is the amount of the charge back?

A. The amount of the account which had matured.

3964 Q. Can you tell me what was the so-called grace that was allowed you by Mr. Dockendorff after the maturity of the account before it was charged back?

A. I think fifteen days.

Q. Can you tell us what general line of conduct of business succeeded the one you have just testified about?

A. After that, instead of giving Mr. Dockendorff our checks, Mr. Dockendorff would send us his check for the amount of these charge backs, which we would endorse and return to him.

3965 Q. So that instead of your furnishing the check of the Schwab-Kepner Company, Mr. Dockendorff would draw his check to the order of the Schwab-Kepner Company, which you would endorse to him and return to him likewise for the amount of the charge back?

A. Yes.

Q. What was the next method of business that succeeded that with respect to the charge backs?

A. Well, later the transfer of checks was abolished and Mr. Dockendorff issued a

3966 charge against us for the amount of these accounts and that was all there was to it.

Q. Will you explain what you mean by that?

A. Our account was charged with the amount of these accounts which were charged back to us.

Q. The charge backs were charged to you on your account current?

A. Yes.

Q. And Mr. Dockendorff would credit you with the additional collateral from the Schwab-Kepner Company?

A. You mean new collateral? 3967

Q. New collateral, yes.

A. Yes.

Q. Does that bring you down to the time of the receivership?

A. That was the method in vogue at the time of the receivership."

Master: I do not see that the testimony to which you have called my attention is of such a nature as to justify the hypothesis contained in your questions this morning, therefore I shall adhere to the ruling of this morning.

Mr. Wolf: Just what hypothesis do you 3968
consider that it does not sustain?

Master: I do not consider that it sustains the hypothesis that the overdues were charged back to Schwab-Kepner Company and new collateral given for them and on the question of the payment by the Schwab-Kepner Company what Mr. Kepner testified to was that originally the Schwab-Kepner Company, when the overdues were charged back, sent its check to Mr. Dockendorff, and that that system was departed from about eight months before the bankruptcy and that then a second system was begun, which was 3969
that Dockendorff would send his check for the amount of the charge backs, which they would endorse and that was in vogue until four months before the bankruptcy, and that then the third system was adopted, which was that the overdues were simply charged back to them in their account current.

By Mr. Wolf:

Q. Mr. Stern, referring to your specimen day's transaction on page 5, assuming that the overdues

3970 are charged back by Dockendorff to the Schwab-Kepner Company and deducted from the collateral received by Dockendorff from day to day, that is to say that the overdues charged back on a given day were deducted from the collateral received that day, what changes, if any, would be made in the specimen day's transaction appearing on page 5?

Mr. Cohen: Objected to upon the ground that it is incompetent, irrelevant and based upon an assumption of facts not in evidence and further it involves an assumption not supported by any proof, it involves the
3971 assumption that the charge backs on any particular day were deducted from the new collateral on that particular day and there is absolutely nothing in the evidence anywhere that could be made to appear to support it, there is nothing upon the record that justifies such an assumption, and further upon the ground that counsel has eliminated the fact that this sample day's transaction was prepared upon a certain theory which has now been made clear to the Referee and it isn't necessary to go into any incidental change that would have to be made in the
3972 sample day's transaction in order to work out the theory of counsel, it is quite obvious that the change is one that could be made by anyone with reasonable intelligence.

Master: It may be a question whether that wasn't the third method. Mr. Kepner testified at page 496 "Later the transfer of checks," that is the drawing of checks by Dockendorff to the Schwab-Kepner Company, which they endorsed and returned, "was abolished and Dockendorff issued a charge against us for the amount of these accounts and that was all there was to it."

Now, if he charged them with the amount of 3973
the accounts, of course he deducted it from the amount of the advances which he was making them at that time and it may be that Mr. Wolf is entitled to consider that a deduction from the 80 per cent. of the new collateral received on that day. It is a charge against them on one side of the account and the new collateral is a credit on the other side and for his own purposes he may be entitled to have it deducted to find out what the net results of the day's transactions are, and I don't know as there is any viciousness in the question. The objection is overruled. 3974

Sworn to before me this
17th day of May, 1911.)

Adjourned to Friday, May 19th, 1911, at 10.30 A. M.

3976 UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff be-
3977 fore Edwin G. Adams, Special Master, at No. 165 Broadway, New York City, on Friday, May 19th, 1911, at 10:30 A. M.

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.

RALPH WOLF and GARRARD GLEN, Attorneys for Trustee.

ALFRED J. STERN, recalled.

By Mr. Wolf:

Last question read as follows:

3978 Q. Mr. Stern, referring to your specimen day's transaction on page 5, assuming that the overdues are charged back by Dockendorff to the Schwab-Kepner Company and deducted from the collateral received by Dockendorff from day to day, that is to say, that the overdues charged back on a given day were deducted from the collateral received that day, what changes, if any, would be made in the specimen day's transaction appearing on page 5?

A. I would enter the collateral received excluding XC $10,000 and then deduct from that, less

overdues charged back $4,500, and then extend 3979
the difference $5,500, which I would add to the $10,000 collateral on hand at the beginning of the day.

Q. Would any difference be made in the loan account?

A. No, sir.

Q. Simply in the current collateral?

A. Yes, sir.

Q. The ultimate result is the same, but the compilation of the figures is slightly different?

A. Yes, sir.

Q. Assume, Mr. Stern, that certain accounts which had been paid by the Schwab-Kepner Com- 3980
pany as overdue accounts had not yet been paid by the purchasers, what changes, if any, would have been made in the specimen day's transaction at page 5?

Mr. Cohen: Objected to upon the ground that it assumes that certain accounts had been paid by the Schwab-Kepner Company as overdues, and comes within the ruling of your Honor already made.

Overruled.

Exception.

A. Whatever amount had been paid by the 3981
Schwab-Kepner Company would be entered as a payment in the loan account in addition to the payments shown.

Q. Assuming, Mr. Stern, that the Schwab-Kepner Company paid no cash to Dockendorff on account of the overdues at the time the overdues were charged back, was there any method of payment of the overdues other than by a deduction of the amount of the overdues from the collateral received from day to day?

Mr. Cohen: Objected to upon the ground

3982 that it assumes facts not in evidence and is based upon a hypothesis not supported by any evidence whatever.

Objection overruled.

Exception.

Question read.

Mr. Cohen: I make the further objection that the question is unintelligible; it starts with an assumption and asks for a fact.

Overruled.

Witness: I submit your Honor that the question is unfair because a yes answer would mean that the payment or deduction

3983 either a yes or no would mean that the deduction of the overdues from the current collateral received that day was the method of payment. I don't think that Mr. Wolf has the right to commit me to that theory which is his.

Master: Answer the question your own way.

A. Without assuming that the deduction of the overdues from the current collateral on any one day constituted payment of those overdues an additional manner of fulfilling the provisions of the con-

3984 tract providing that the borrower shall immediately pay the amount thereof to the party of the second part would to my mind be this—deducting the amount or reducing the amount of the loan which Dockendorff was making upon that day by the amount of the overdues which the Schwab-Kepner Company were obligated to pay for—the idea being in my mind that the obligation of the Schwab-Kepner Company to pay to Dockendorff this amount being an obligation to reduce the total amount of the loan as to be in accord with the total amount of the collateral.

Q. You said reducing the loan, you mean reducing the obligation to loan? 3985

A. No, I meant reducing the total amount of the loan to conform to the 80% of the total amount of the current collateral.

Q. Now, referring to the specimens day's transaction on page 5 you have deducted the overdues charged back from the total collateral on hand excluding the XC, have you not?

A. Excluding XC and overdues, yes, sir.

Q. Now, do you consider that that is a method of payment of the overdues by the Schwab-Kepner Company to Dockendorff?

A. No, sir. 3986

Q. You don't consider that payment, do you?

A. No, sir.

Q. Now, if payment of the overdues charged back on a given day were made by the Schwab-Kepner Company the account would be set up in different form, that is the specimen day's transaction would be set up in different form?

Mr. Cohen: Paid in what, in the sense in which you asked the last question?

Mr. Wolf: Paid in the sense in which I asked the preceding question.

A. I don't know what sense that is. If it were 3987
by cash I have already indicated and if the sending down of a certain number of accounts and a charging back constituted payment I have also described that. Do you want the whole thing over again?

Q. No, I simply want the answer that there would be a difference.

A. I have already outlined that.

Q. I am correct in that there would be a difference?

A. Yes.

Q. Now, if it were considered a payment will

3088 you state briefly the change that would be made in the specimen day's transaction at page 5?

Mr. Cohen: Objected to on the ground that it has already been answered and further that it assumes a hypothesis not based upon facts in evidence.

Objection overruled; exception.

A. Will you explain your question a little further.

Q. Assuming, and without binding you to the legal accuracy of my assumption, assuming that on a certain day Dockendorff received $10,000 of current collateral; on that day he charged back
3089 $1,500; assume that Dockendorff deducted the $1,500 from the $10,000 thereby constituting a payment of the $1,500 charged back, what difference would be made in the specimen day's transaction appearing at page 5?

Mr. Cohen: Objected to upon the ground that it assumes facts not proven.

Overruled.

A. The collateral received would be, excluding X0' $10,000 and the overdues charged back would be deducted leaving a net amount of $5,500 which would be added to the total current collateral on
3090 hand at the beginning of the day.

Q. In other words there would be a balance added to the collateral on hand at the beginning of the day of $5,500?

A. Yes, sir.

Q. And thus the total amount of collateral on hand at the beginning of the day excluding X0' and overdues against which Dockendorff could have made a loan under the contract would have been $105,500 on that theory?

A. The only difficulty there is that you take in two of the elements of the computation leav-

ing out the third element, the figure would be the 3091
same as I have here, 86,300.

Q. And the ultimate figure of the amount warranted on a day's transactions on the theory I have stated and the theory you have stated would be precisely the same sum of 86,300?

A. Yes.

Q. Your theory of preparing the specimen day's transaction appearing on page 5 respecting the X6's is that Dockendorff still maintained his lien as against the X6's accounts collected?

A. That they still remained his collateral, the X6's collected.

Q. You have prepared a specimen day's trans- 3092
action on page 5 on the theory that subsequent to August 1st, 1910, Dockendorff was entitled to retain all X6's collected, retain his lien and retain the proceeds subject to his lien?

A. That is, the X6's as long as they remained uncollected were collateral for Dockendorff, and when collected they would be credited to the account current.

Q. And that theory of yours is based upon the contract and the testimony as I understand it?

A. The contract and the testimony and Dockendorff's books.

Q. Will you please enumerate the books of 3093
Dockendorff that led you to come to that theory?

A. Well, it is again a question of the ledger cards.

Q. Anything else?

A. And the collateral sheets, remittance sheets.

Q. Now, which were the fundamental records upon which your theory was based, the books, records and documents of Dockendorff or the testimony and the contract?

A. The contract was the fundamental proposition.

3994 Q. And the rest was merely in substantiation of your theory?

A. Yes, sir, substantiation of my theory of the contract.

Q. Did the testimony have any important bearing in inducing you to arrive at that theory respecting the X4' accounts?

A. I wouldn't say that it had except in corroboration.

Q. Of the contract?

A. Yes.

Q. You took the testimony into account?

A. Yes, sir.

3995 Q. And I understood you to say that you had read all of the testimony?

A. Yes, sir.

Q. Did you read the testimony of Mr. Williams that on the first day of August, 1910, he called to Deckenderff's attention what he considered to be the financial condition of the Schwab-Kepner Company?

Mr. Cohen: Objected to as immaterial, irrelevant and incompetent and having no bearing upon the testimony of this witness.

Objection sustained.

3996 Q. Mr. Stern, on page 8 of your report you say that your examination has not yet been sufficiently exhaustive to warrant you in accepting either the $16,748.68 or the $19,726.42 appearing on Exhibit A. Have you continued your investigation at this time so that you are now able to state which of these items is correct?

A. No, sir.

Q. Referring to your report on page 9 you say that the next item on the exhibit purports to represent accounts receivable of August 1st, 1910, in which the shipment of merchandise was subse-

quent to August 1st, 1910, but that you have not 3997
examined in detail the data from which these schedules were compiled; before this report was put in evidence were you not aware of the fact that a supplemental schedule was filed based upon the bills of lading that were in evidence?

A. Yes, but not subsequent to the writing of the report.

Q. But it was prior to its being offered in evidence?

A. Yes, sir.

Q. Do you now question the sources from which the schedule was prepared or do you withdraw that criticism?

3998

A. I still question it as far as shipment is concerned.

Q. Notwithstanding that it is based on the original bills of lading produced by Dockendorff?

A. Yes, sir.

Q. Now, Mr. Stern, on page 9, referring to the item of $74,631.41, and the item of $4,215.35, do you question that $74,631.41 is the correct amount collected on the charge backs?

A. I haven't verified it but I don't question it.

Q. By this criticism on page 9 and on page 8 you do not in any way refer to the accuracy?

3999

A. If Schedule 2 stands as it is, yes.

Q. Haven't you totaled up the amount collected to see whether the figure of $74,631.41 is correct?

A. I haven't made any detailed examination of the report.

Q. wouldn't that be a very simple thing to do?

A. No, it was obtained from all the remittance sheets and I would have to check all those back.

Q. The item of $74,631.41 could be correct notwithstanding the incorrectness of the two items of $16,000 and $19,000 could it not?

4000 A. You are referring to the other two items now?

Q. Yes.

A. Notwithstanding the incorrectness of those two items the $74,631.41 might be correct, yes.

Q. Now, on page 9 you state that Schedule 3 purports to contain not only certain information but a list of all the accounts that were paid, and your criticism is that in your opinion this schedule is incomplete, taking no account of the remittances received from overdues accounts, these being omitted entirely, is that correct?

A. Yes, sir.

Q. Is it not a fact that it appears in Suffern's
4001 report what the remittances were from the overdue accounts?

A. Not in that schedule.

Q. But does it not appear in other parts of the report what those remittances were?

A. I don't know. My criticism was that the heading of that schedule could not be taken literally for the reason that the overdue accounts were not included in it.

Q. I call your attention to Exhibit C, page 8, and ask if in that exhibit you do not see compiled in several columns the results of accounts charged S. K. Co. by Dockendorff?

4002 A. Yes, sir.

Q. So that are you not now able to state that Suffern's report does show the remittances received from overdue accounts?

A. That wasn't the nature of the criticism, the nature of the criticism was that the title of Schedule A is dates of shipment of accounts receivable assigned subsequent to August 1st, 1910, that were paid for or remained open on November 28th, 1910, and the criticism was that whereas it purported to be a complete schedule of all accounts receivable assigned the overdues were not included in that

schedule, that is the only criticism I made of that, 4003
which was well made, I believe.

Q. I call your attention to page 10 on which you say that the items in Suffern & Son's report purporting to represent XC accounts assigned subsequent to August 1st, 1910, and which were paid or remained open on November 28th, 1910, and a further item apparently paid twice to Dockendorff supported by Schedule 4 have not as yet been verified by you and you must accept them at present without further comment?

A. Yes, sir.

Q. Since the making of this report on April 3rd, 1911, have you had opportunity to verify those 4004
schedules by comparison with the records from which they were compiled?

A. I might answer yes, I have had time to verify those schedules, all the time that would be required, but I considered the work unnecessary.

Q. Have you done it?

A. No.

Q. Mr. Suffern's report was put in evidence March 24th, 1911, and you have had now substantially two months within which to verify those items, do you claim that the time allowed has been insufficient?

A. No, I don't claim that. It may have been, 4005
but the reason I didn't take it up was because I thought that branch of the work was unnecessary. It seems to me that those matters are rather immaterial.

Q. Now, referring to page 11, you say that Exhibit C is admittedly incomplete because a number of remittance sheets are listed as missing, is that correct?

A. That is what I said, yes.

Q. Do you not know that Suffern & Son took into account all of the remittance sheets which were

4006 in their possession and which were furnished to them by Dockendorff and that those remittance sheets have been in the possession of Dockendorff?

A. I presumed that they had done that.

Q. Then if your criticism is that some of the remittance sheets are missing, isn't that a criticism of Dockendorff's non-production of them?

A. I don't know, it depends upon whether Dockendorff ever received them; it depends upon whether he exercised due diligence in the care of them, the only thing I intended to point out was that the report as it stood did state that certain remittance sheets were missing and therefore was
4007 admittedly incomplete.

Q. On page 11 you say that Suffern & Son accepted the balance of security as per statement submitted by Dockendorff after giving effect to sundry adjustments and that the adjustments represent certain XC accounts and overdues as you have been informed.

A. No, I said the entire balance included XC and overdues.

Q. You say "This balance, we are informed, represents all accounts, including XC accounts and overdues?

A. Yes, sir.

4008 Q. What were the sources of that information?

A. The testimony. I was also informed of it verbally, but the testimony furnished that information.

Q. Who informed you verbally?

A. Mr. Dockendorff.

Q. You say that in the compilation of Exhibit C, Suffern & Son have considered all accounts which have become overdue subsequent to August 1st, 1910, as a deduction from the collateral, is it not a fact that in Exhibit C, Suffern & Son show all accounts which have become overdue subsequent to

August 1st, 1910, in one column, and the collateral 4009
in another column?

A. I don't understand your use of the word collateral, Mr. Wolf.

Q. Well, you use it in your report.

A. Well, it has a certain well defined meaning when I use it.

Q. Isn't it a fact that your criticism is merely one of nomenclature, that is, the using of the words "Balance Security Account" on Exhibit C, page 8, Suffern & Son did not include in this security shown under that column the overdues and the XC accounts, but showed those in separate columns?

A. No, that is not the fact. The XC's are in- 4010
cluded and some of the overdues are included and others not.

Q. Are they included in the balance security account?

A. Any overdues which became overdue prior to August 1st are included in the balance security account; any overdues charged back subsequent to August 1st are not included. All XC's are included.

Q. Isn't that your criticism that after August 1st, 1910, instead of being included in the balance security account, they are segregated in different columns?

A. No, my criticism is that it doesn't represent 4011
the balance security account upon any conceivable theory.

Q. Why not?

A. As I have explained in my report.

Q. Tell me why not.

A. At August 1st, 1910, there were a certain amount of overdues included in the balance, after August 1st it appears that Suffern & Son deducted any overdues charged back after August 1st, but if there had been any overdues charged back before

4012 August 1st they still remained in the balance security account as Suffern & Son have prepared it, therefore the balance security account does not represent first of all the total of all the accounts that Dockendorff held, because the overdues which were charged back after August 1st are not included, and it does not represent the total of all the accounts with the exception of the overdues, because of the fact that the overdues charged back prior to August 1st are included and those subsequent to August 1st are excluded from it and it doesn't represent the total of the accounts upon which the loan was computed, because the contract
4013 and the testimony is to the effect that the XC accounts do not enter into the computation of the loan and they are included in the balance.

Q. At the end of any given week, as shown by this report, could you have met that criticism and ascertained according to your theory all of the sums that should be included in the balance to security account by adding the balance security account as shown on Exhibit C, page 8, to the charge backs and the XC's?

A. Not in that way.

Q. By adding any two or more of the columns together on Exhibit C, page 8, could you have
4014 ascertained?

A. Yes, I could have made a computation to arrive at that.

Q. Which columns would you have added together to ascertain the balance security account?

A. Under what theory?

Q. Under your theory?

A. That all of the accounts constituted collateral of Dockendorff?

Q. Yes. I want to see what your criticism here amounts to; tell me the columns you would have

added together in order to obviate that possible criticism? 4015

A. I would add column D to the balance security account and deduct the sum of the three columns of results of accounts charged Schwab-Kepner Company by Dockendorff.

Q. Is that all?

A. I think so.

Q. You say that you understand that the first item in the balance security account on page 8, Exhibit C, included overdues and XC's that existed on that date?

A. Yes, sir.

Q. What was the amount of those overdues and XC's that existed on that date? 4016

A. I don't know.

Q. Referring to page 13 of your report, where you purport to give percentage of loans to balance security account and percentage of margin—take the percentage of loan to balance security account on August 1st, you found that the loan was 50 per cent. of the security account, did you not?

A. Yes.

Mr. Cohen: Found it to be on Suffern's figures, you mean?

Q. In your report you certified that on Suffern & Son's figures the percentage of loan to balance security account on the first of August was 50 per cent.? 4017

A. That is the relation of the two figures as shown in the Suffern report on that date.

Q. In taking the balance of security account on that date, did the security account contain the XC and overdue accounts existing on that date?

A. Yes, sir.

Q. Now, take the figure on a later date as a specimen, October 1st, the percentage of loan to

4018 balance security account on that date according to your report based upon Suffern's figures is 60 per cent., is it not?

A. Yes.

Q. Now, in determining the loan as of that date, that is the loan of Dockendorff to the Schwab-Kepner Company, you took Suffern & Son's figures?

A. Yes, sir.

Q. And in determining the balance of security account, what figures did you take?

A. The Suffern & Son figures.

Q. The last column on page 8, of Exhibit C?

A. Yes, sir.

4019 Q. And that excluded XC's and charge backs subsequent to August 1st, 1910?

Mr. Cohen: Objected to upon the ground that it appears from the Suffern report itself which is in evidence, what it shows and further upon the ground that the percentages appearing on pages 12 and 13 of Mr. Stern's report, are based upon the figures contained in the Suffern report.

Overruled.

A. Well, not when you put it just that way. It excludes those accounts which were charged back subsequent to August 1st, 1910, but includes all of
4020 the charge back accounts which had been charged back prior to August 1st, 1910, and includes all of the XC accounts, which is slightly different, Mr. Wolf, from what you stated.

Q. It only includes, however, the XC and overdue accounts which existed on the first of August, 1910, which had not already been paid, in other words, the balance security account on Exhibit C, page 8 of Suffern & Son's report as of the first of August, 1910, only includes the overdues and XC's which on October 1st, 1910, remained unpaid, which appeared in the August 1st figure of $341,000?

A. No, it included all of the XC's, whether before or after August 1st. 4021

Q. Did you understand that the first item in balance security account on Exhibit C, page 8, $341,123.91 included overdues and XC's existing on that date?

A. Yes, sir.

Q. Now, take the balance security account, say as of October 1st, 1910, did you understand that that item only included the overdues which existed on August 1st and which were unpaid?

A. No, I understood from the way this report was prepared that it included all of the overdues of August 1st, 1910, regardless of whether they were paid or not. 4022

Q. Then you understood that, taking the last column of the balance security account on November 27th, 1910, $445,762.78 included precisely the same amount of overdues as the first item, that is, $341,123.91?

A. Yes, sir, and the reason for that, Mr. Wolf, is—

Mr. Wolf: That is all.

Mr. Cohen: I would like to have the witness give his reason.

Mr. Wolf: I object.

Q. Coming back to your percentage figures, let us take the percentage of loan to balance security account on November 28th, 1910, you figure that to be 56 per cent.? 4023

A. Upon the Suffern figures.

Q. Now, what was the figure you took as the indebtedness of the Schwab-Kepner Company to Dockendorff on that date?

A. The figure shown by the Suffern report?

Q. What is the figure?

A. $251,638.46.

4024 Q. That is the figure shown in the column headed balance on page 6, Exhibit B?

A. That is.

Q. Now, what did you determine to be the security?

A. I didn't make any determination as to the security.

Q. As appears by Suffern's report?

A. I merely computed it.

Q. What did you compute it to be?

A. I merely took it as they have it.

Q. What did you take it to be?

A. For the purposes of this computation

4025 $445,762.68.

Q. That is the last column of Exhibit C, page 8?

A. Yes, sir.

Q. And did you include in the security which Dockendorff held on that date the overdues?

Mr. Cohen: Objected to upon the ground that it already appears that the witness included nothing, he simply computed upon the report.

Objection sustained.

Q. And is that the way the entire percentage

4026 computation is based except the item of August 1st, 1910?

A. There are no exceptions.

Q. That is, by a comparison of the loan balance on Exhibit B, page 6, with the items in the balance security account, Exhibit C, page 8.

A. Yes, sir, there are no exceptions.

Q. Look at Exhibit C, page 8, according to your criticism what would you determine from the figures on Exhibit C, page 8, the balance of security account to be on November 28th?

Mr. Cohen: Objected to upon the ground

that it asks the witness to state a fact as to the balance of security account when— 4027

Mr. Wolf: As appears by Suffern & Son's report?

Mr. Cohen: Then I object upon the ground that the witness cannot change Suffern & Son's report, he has endeavored merely to give percentages based upon those figures and counsel is trying to inject into the record an apparent statement as to what the balance of security account is, and use the questions and answers detached from the record as the basis of a legal theory. 4028

Objection overruled.

A. I don't understand just what factors you want me to take into consideration.

Q. I want you to take Exhibit C, page 8, and if you were determining from those figures what the balance of security account was on November 28th, 1910, I want you to tell me what you would find the figure to be.

A. I couldn't form such a determination from those figures alone.

Q. Take any part of Suffern & Son's report.

A. I couldn't obtain the information from any part of it, according to my way of thinking. 4029

Q. You testified when I called your attention to your criticism of Exhibit C as appears on page 11 of your report, your criticism was of the misleading use of the words balance security account, and you testified that by adding certain columns to and deducting certain columns from the balance to security account, you could overcome that criticism—now, I ask you with that in mind to tell me what you would determine the balance of security account to be from Exhibit C, page 8?

4030 A. I have already testified that I take exception to the fact that $120,000 of cancellations weren't considered in Suffern & Son's report.

Mr. Wolf: I move to strike out the answer.

Motion denied.

Question read.

Mr. Wolf: I ask you for a direct answer to that question.

A. I cannot give you any other answer unless you tell me what particulars you want me to take into consideration.

4031 Q. Take the figures that appear on Exhibit C, page 8, and tell me, with the criticism in mind, which you have already testified to, about how the balance of security account to be determined upon—what the balance of security account should be according to those figures as of November 28th, 1910?

Mr. Cohen: Objected to upon the ground that it has already been covered. The witness has testified that he cannot state the actual balance, and further upon the ground that he canot make a computation except as they appear from the face of this

4032 paper.

Objection overruled.

Question read.

A. As I understand your question, you desire me not to take into consideration the question of cancellations at the bleacheries?

Referee: His question is whether upon your theory you can determine what the balance of security account was on a certain day from the figures that appear on that page?

A. I cannot determine what the actual balance of security account is. 4033

Q. Can you determine what the apparent balance of security account is as appears on Exhibit C, page 8?

Mr. Cohen: Objected to upon the ground that it is exactly what it appears to be on the face of the paper.

Objection sustained.

Q. Mr. Stern, assuming that the figures on Exhibit C, page 8, are accurate, can you tell me the balance of security account on November 28th, 1910?

4034

A. I don't think I can. The question is a question of the cancellation, and if you can obviate that from your question—

Referee: Assuming that the figures are accurate, then wouldn't the balance be what it is there?

Mr. Wolf: The question assumes that they are accurate.

Mr. Cohen: The figures might be accurate and yet ignore factors that enter into the computation.

A. I might suggest that you state the factors that you want me to take into consideration. 4035

Q. Assume the figures on page 8 of Exhibit C to be correct, and tell me what the balance of security account was on November 28th, 1910.

Mr. Cohen: I ask that the examiner indicate what he means by the word 'correct,' whether it takes into account all the factors, the whole truth. I object to the question as it stands.

Objection sustained.

Master: The question is ambiguous.

4036 Q. Assuming, Mr. Stern, that each and all of the figures appearing on Exhibit C, page 8, are exactly what Exhibit C, page 8, purports that they really are, and then tell me as of November 28th, 1910, what the balance of security account really is?

Mr. Cohen: Objected to upon the ground that the witness has already testified that he cannot testify to the actual fact without other data not before him.

Objection overruled.

A. If the figures on page 8 are all what they
037 really purport to be, then the balance of security is as it is stated there, namely, $445,762.78. If you will ask your questions intelligibly I will try to answer them.

Mr. Wolf: I move to strike out the last part of the answer, the suggestion and criticism of the witness.

Motion allowed.

Q. Referring to pages 11 and 12 of your exhibit, you criticise the use of the words of Suffern & Son on Exhibit C, page 8, balance security account, do you not?

A. Yes, sir.

4038 Q. And you consider that the use of the words is misleading?

A. Yes, sir.

Q. Now, in order that they should not be misleading, according to your way of thinking, what columns would you add or subtract on Exhibit C, page 8, in order to determine what you would call the balance of security account?

A. You mean what changes would be made?

Q. Yes.

A. I would add column D and then deduct the total—

Q. Add column D to what? 4039

A. To the balance security account column, and deduct the sum of the three columns results of accounts charged S. K. Company by J. E. D., and I would also give effect in the schedules to the cancellations.

Q. Is there anything on Exhibit C, page 8, about cancellations?

A. There is not.

Q. Now, refer to your percentage column on page 13; will you tell me whether that is based entirely on Exhibit B and Exhibit C of Suffern & Son's report, pages 6 and 8?

A. Referring to what? 4040

Q. Your percentages set forth on page 13 of your report, and tell me whether it is based entirely on the figures appearing on Suffern & Son's report at pages 6 and 8?

A. No, because I have also computed the percentages after deducting 20 per cent.

Q. Down to the words, "A gradual increase is thus shown, etc.," is it based entirely upon pages 6 and 8?

A. Those percentages are, yes.

Q. Now, will you kindly tell me what figure you obtain by adding to the balance security account November 28th, 1910, column D, and then deducting the results of accounts charged S. K. Company by J. E. D.? 4041

A. $481,766.04.

Q. And what is the loan account on that date?

Mr. Cohen: As indicated on that exhibit?

A. The balance of the loan account on page 6, Exhibit B, is $251,638.46.

Q. What percentage of the first figure?

A. About 52%.

Q. Now, take September 10th, 1910, and add

4042 column D to the balance security account and deduct the result of accounts charged back and tell me what the figure is?

A. $379,894.37.

Q. And what was the loan on that date?

A. $209,498.49.

Q. What was the percentage of loan to balance security account upon those figures?

A. 55%.

Q. You refer in your report to approximately $120,000 deducted from the balance security account because of cancellations by the bleacheries?

A. Yes, sir.

4043 Q. Upon what is the statement based that $120,000 was cancelled by the bleacheries?

A. Testimony.

Q. What testimony?

A. Mr. Williams' testimony.

Q. When do you understand that that $120,000 was deducted?

A. When do I understand the cancellation took place?

Q. Yes.

A. The first week in November.

Q. Do you understand that it took place all at the same time?

4044 A. Approximately the same time.

Q. What bleacheries made the cancellations?

A. I don't know.

Q. And you obtained the figure of $120,000 from Mr. Williams?

A. The testimony.

Q. From Mr. Williams' testimony?

A. Yes, sir.

Q. Now, I wish you would add to the balance security account, column D as appears on page 8 of Suffern's report and deduct the results of the

accounts charged back as of November 5th, 1910, and give me the result. 4045

A. $525,753.35.

Q. What was the loan on that date from Dockendorff to Schwab-Kepner Company?

A. $290,637.82. All of this testimony is as per the Suffern report; I am not stating facts, I am stating figures as shown by the Suffern report.

Q. And the percentage is what?

A. 55%.

Q. So that on November 5th the percentage of loan to security account was 55%, based on those figures?

A. Yes, sir. 4046

Q. Now, take November 12th and adopting the same method, what is the percentage of loan to balance security account?

A. 53%.

Q. November 19th?

A. 53%.

Q. Now, the percentages that you have computed on page 14 of your report, taking for example the item of balance security account as of October 29th 1910, $500,573.16, does that include column D on Exhibit C, page 8?

A. No, that is the difference as shown by the Suffern report. 4047

Q. That is, you have simply taken the one figure shown on the Suffern report in the balance security account?

A. Yes, sir.

Q. And you have not included the items in column D nor excluded the results of the accounts charged back?

A. No, I merely took the figure as stated in Suffern & Son's report.

Q. All of those figures are stated?

A. Yes, they all are.

4048 Q. You mean you simply took the one figure as stated in the balance security account, stated in the last column of Exhibit C, page 8?

A. I don't know just what you are trying to get at.

Q. Well, suppose you stop trying to find out what I am getting at and try to answer the question.

Question read.

A. As I understand it you are referring to that one figure, the $500,000?

Q. Yes.

4049 A. That was taken from Suffern's report in the balance security account on that date.

Q. And does not take into consideration any other figures on Exhibit C, page 8?

A. No, it takes the balance of security account as Mr. Suffern conceived it to be, according to his report.

Q. And the same is true of the item of $306,251.47 on page 14?

A. That is the balance of the loan account.

Q. I mean $341,123.91?

A. The same is true, yes.

Q. Now, referring again for a moment to page

4050 5 of your report, if a cancellation of collateral should be made because of return of merchandise as shown by the remittance sheets which are in evidence how would you enter that in the specimen day's transactions?

A. If merchandise were returned upon the current collateral then the amount would be entered as a reduction of the current collateral; if on XC or overdue accounts it would be entered as a reduction of XC and overdues collateral.

Q. Assume for the moment that the returned

merchandise is on the overdues, from what figure would you deduct the return of the merchandise? 4051

A. From the $35,500 as appears in the specimen day's transactions.

Q. And if it was returned on current collateral from what figure would it be deducted?

A. $110,000.

Q. And in case of the deduction from the $35,500 for the merchandise returned is it your theory that that deduction appears as the payment of that credit?

A. I don't know whether I would use the word payment, I would say it appears as a reduction of the account.

4052

Q. And how about the deduction from the $110,000 if the merchandise were returned on current collateral?

A. I would say that it appeared the same way

Q. As a liquidation of that account where the merchandise had been returned?

A. In whole or in part, depending on the amount.

Q. But you would consider, according to your theory, that it was a liquidation of the account?

A. Either a liquidation of the account or the cancelling of a prior charge to that extent.

Q. And did you find that that was the method of bookkeeping with respect to merchandise returned adopted by Dockendorff? 4053

A. I found that the merchandise returned was posted to the credit of the various ledger cards.

Q. As you have indicated?

A. Yes, sir.

Recess Taken.

4054 After Recess.

ALFERD J. STERN, examination continued.

By Mr. Wolf:

Q. Mr. Stern, at the last examination, on Wednesday, you testified that you used the recapitulation sheets, did you use the entries on the recapitulation sheets or merely the forms?

A. Merely the forms.

Q. Have you one of the recapitulation sheets here?

A. No, sir.

4055 Mr. Wolf: I move to strike out the testimony of Mr. Stern upon the ground that his testimony is fortified, if not based, upon exhibits not in evidence, upon a system of bookkeeping not in evidence and at the present stage of the record is not binding upon the Trustee.

Master: I see no reason why Mr. Stern's testimony should be stricken out, the basis of fact upon which his opinion rests is fully shown by his report which has been put in evidence and by the cross examination. If the Court finds that any of the assumptions of fact are not supported by the evidence
4056 and that his opinion is based upon facts not in evidence, his opinion to that extent, at least, to the extent to which it is affected thereby will necessarily be excluded from consideration. The motion is denied.

Redirect examination by Mr. Cohen:

Q. Mr. Stern, as an expert accountant, what do you understand ordinarily to be the meaning of the words "Balance Security Account?"

Mr. Wolf: Objected to upon the ground that it has already been answered.

Objection overruled.

A. The amount of security remaining on hand 4057
that is held as collateral.

Q. What do you understand ordinarily, as an accountant, by the words "loan account?"

A. The loan account is an account showing the indebtedness of one party to another arising as the result of money advanced.

Q. What do you understand by the words "security account" without the word balance?

A. In connection with the loan account, do you mean?

Q. No, as distinguished from the loan account.

A. The security account to my mind represents the security or collateral that is held for the loan. 4058

Q. How may a loan account be reduced?

Mr. Wolf: Objected to upon the ground that it is immaterial, incompetent and irrelevant, calling for a legal conclusion.

Objection overruled.

A. By the payment of cash.

Q. How may it be increased?

A. By advances of cash.

Q. How may a security account be increased?

A. By the deposit of additional security.

Q. How may a security account be reduced?

A. By the payment of some of the security and 4059
by the withdrawal of some security.

Q. Now, when security is withdrawn from a security account, what are the ordinary entries that would be made in a book of account by an accountant?

Mr. Wolf: Objected to upon the ground that it is immaterial and irrelevant and incompetent and no proper foundation has been laid, and it is not proper redirect.

Objection overruled.

4060 Mr. Wolf: Will counsel state what he means by that question?

Master: I think the question is proper redirect as it stands.

Question read.

A. Assuming that the security received was entered as a debit, the security withdrawn would be entered as a credit.

Q. Now, when money is paid by a debtor on a loan account, what entry would ordinarily be made by an accountant?

A. Assuming that the amount of the loan is entered as a debit, the amount of the payment would
4061 be entered as a credit.

Q. What do you understand, as an accountant, by the words "accounts current?"

A. A running account showing the cash transactions between two parties.

Q. What would be shown ordinarily by an account current where the collateral consisted of accounts receivable?

A. The advances of loans and the repayment of loans.

Q. Anything else?

A. No, sir.

Q. Would there be anything shown in such an
4062 account concerning new security added to the collateral?

A. Not in the account current.

Q. Would there be shown in such an account any collateral turned over by the debtor or the borrower to the lender?

A. No, sir.

Q. Now, which is the cash account which shows the cash transactions between the parties, the account current or the security account?

A. The account current.

Q. What entry or entries would appear on an account current if on a given day a charge was made against the borrower by reason of an account receivable becoming overdue and on the same day new collateral was received by the lender? 4063

Mr. Wolf: Objected to upon the ground that it is incompetent, immaterial and irrelevant, and as calling for the answer of the witness as to what could appear instead of what appeared in this case, not supported by any facts in the evidence.

Overruled.

A. There would be no entry in the account current. 4064

Q. Do you, as an expert accountant, know of any way in which a loan account as distinguished from a security account could be affected by the addition on any particular day of new collateral?

A. No, sir.

Q. When new collateral was received, upon what account would it appear as distinguishing between those two accounts?

A. On the security account or collateral account, the two terms being used synonymously

Q. Did you examine the account current in this case, that is in evidence? 4065

A. Yes, sir.

Q. Were you influenced in the formation of the theory that you made by what you found in that exhibit?

Mr. Wolf: Objected to upon the ground that it was covered by the direct testimony, is not proper redirect, is entirely too broad

Objection overruled.

A. Yes, sir.

4006 Q. Did you find in that exhibit anything to indicate to your mind as an expert accountant that on any particular occasion any new collateral was received from the Schwab-Kepner Company by Dockendorff, in payment of any old collateral?

Mr. Wolf: Objected to as calling for a conclusion of the witness and as leading; that is a very vital question in this case.

Objection sustained.

Q. Did you or did you not?

Mr. Wolf: Objected to, I think it is proper to ask this witness what he found in that
4007 respect.

Objection sustained.

Q. What, if anything, did you find in that exhibit, the account current, that indicated to you as an expert accountant any new security turned over by Schwab-Kepner Company to Dockendorff in payment of or in liquidation of any old security.

A. Nothing.

Q. Did you, before you made your report, examine the collateral sheets that are in evidence?

A. I examined them, but not in detail.

Q. Did you, before making your report, examine the remittance sheets?

4008 A. I did, but not in detail.

Q. What, if anything, did you find in either the collateral or remittance sheets that indicated to you as an accountant that new collateral at any time had been turned over by the Schwab-Kepner Company to Dockendorff in payment or in liquidation of overdue accounts or in substitution of overdue accounts?

A. Nothing.

Q. What, if anything, did you find in any of those papers to indicate to your mind as an accountant the contrary.

A. The fact that nothing appeared in the account 4069
current except cash advances or cash repayments and charges of Dockendorff for interest, accountants' salaries, etc.

Q. In formulating your theory, did you consider the collateral sheets that are in evidence?

A. Yes, sir.

Q. What, if anything, did you find in those collateral sheets that indicated to your mind as an accountant that overdue accounts were released from the collateral prior to the time of payment of the accounts by the debtors?

A. Nothing.

Q. When I said sheets, I meant collateral sched- 4070
ules.

A. Yes, sir.

Q. What, if anything, did you find in those collateral schedules that indicated the contrary?

A. I would say the absence of any notation to that effect.

Q. What, if anything, did you find in the remittance sheets that indicated to your mind as an accountant that overdue accounts were released from the collateral held by Dockendorff before the date of the payment of the account by the debtor?

A. Nothing.

Q. What, if anything, did you find that indicated 4071
to your mind as an accountant the contrary?

A. The fact that the remittances upon the overdues were included upon the overdue accounts sent to Dockendorff.

Q. Please explain why that indicated to your mind as an accountant that the collateral had not been released before the date of payment by the debtor.

Mr. Wolf: Objected to as calling for the legal conclusion of the witness, not proper redirect.

Objection overruled.

4072 A. Because, unless Mr. Dockendorff at that time still retained his possession of this overdue collateral, I don't see why the Schwab-Kepner Company should remit to him for that overdue collateral when the remittances were actually received.

Q. What, if anything, did you find in the system of ledger cards kept by Dockendorff that indicated to your mind as an accountant that accounts receivable were released from the collateral before the payment of the accounts by the debtor?

Mr. Wolf: Objected to upon the ground that the ledger cards have not been proven and are not binding upon the Trustee.

4073 Objection overruled.

Question read.

A. Nothing.

Q. What, if anything, indicated to your mind the contrary?

A. The fact that the balance was still kept open on the account, these various invoices were still kept open on the cards.

Q. You testified, Mr. Stern, that you talked with Mr. Dockendorff and you also testified that you read all of the testimony in the case before you began hearing the testimony, what, if anything, did

4074 Mr. Dockendorff say to you that influenced you in making up your report other than what appeared in the testimony?

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant, hearsay and not binding upon the Trustee.

Question withdrawn.

Q. Did Mr. Dockendorff tell you anything that influenced you in making up your report that you did not find in his testimony that you read?

Mr. Wolf: Objected to as calling for the 4075
conclusion of the witness.

Mr. Cohen: Then I press my former question.

Objection sustained.

Q. Were you, in making up your report, influenced by what you read in the testimony?

A. Yes, sir.

Q. If you were to strike out of consideration in your mind everything not in the exhibits which you examined, including the report of Suffern & Son, and not in the testimony which you either heard or read, what would you excise or leave out of your report? 4076

Mr. Wolf: Objected to upon the ground that, I stated before that it is asking the witness in an adroit manner whether he relied upon anything not in evidence.

Overruled.

A. Merely the statement that I have examined the method of treating such accounts by J. E. Dockendorff, that is all.

Mr. Wolf: You mean on page 3 of your report?

A. Yes, sir. 4077

Q. Now, confining yourself entirely to the testimony in the case which you read or heard, and confining yourself entirely to the exhibits which are in evidence, what changes, if any, would you make in your report or in the theory contained in your report?

A. Merely the exclusion of that one phrase which I just recited as far as matters contained in the report are concerned and no change as far as theory.

Q. To what extent did you rely, in forming

4078 your theory upon the contract that was put in evidence, the account current, the collateral and remittance sheets, the pink slips, and the report of Suffern & Son, and the schedule of computation which is in evidence which Suffern & Son examined, Exhibit P17?

A. The contract served as the basis for distinguishing between current collateral on the one hand and XC collateral and overdue collateral on the other, also as indicating that the XC and overdue collateral remained collateral of Dockendorff, also for the purpose of arriving at the conclusion that the transactions represented one
4079 loan for which all of the collateral was security; the account current was instrumental in determining my conclusion that the loan was one loan and that there were no specific loans; the collateral sheets were instrumental in furnishing the basis that the XC accounts as well as the current collateral constituted part of Dockendorff's security; the pink slips in connection with the contract were instrumental in furnishing the basis that the overdues charged back were excluded from the current collateral, the report of Suffern & Son indicated that they had treated the loan as being one entire loan and not composed
4080 of specific loans; P17 indicated that all of the collateral was included as security for the one loan and that there was not specific collateral for specific loans. I don't know whether that is a full answer or not, Mr. Cohen.

Mr. Wolf: We move to strike out the answer or that portion of it rather where the witness speaks of certain papers as fortifying his conclusions that the loan was one loan and not specific loans for the rea-

son that we find no such conclusion in the report. 4081

Motion denied.

Q. To what extent were you influenced by the testimony of Mr. Dockendorff which you read in this case?

A. As explanatory and corroborative of the contract and as a resume of the bookkeeping system that he used.

Q. What change, if any, would you care to make in your report if you eliminated the entire testimony of Dockendorff?

A. I think the only change that I would make would be the inclusion as an additional payment 4082
on the loan of cash which the Schwab-Kepner Company obligated themselves to pay by the contract where accounts were charged back. I understood from Dockendorff's testimony that in the period subsequent to August 1st, the Schwab-Kepner Company had not paid for such overdues in cash and for that reason that item was not included in the specimen day's transactions.

Mr. Wolf: I move to strike out the answer of the witness from the words "I understood from Dockendorff's testimony, etc."

4083

Motion denied.

Mr. Wolf: I move to strike it out as a conclusion of the witness concerning the testimony and as not binding upon the Trustee and not responsive to the question.

Motion denied.

Q. You were asked, Mr. Stern, upon what records and documents you relied and upon what testimony you relied in formulating your theory in this report; will you please state to us what you regard as the essential papers, documents and

4084 testimony upon which you relied, upon which your theory rests?

Mr. Wolf: Objected to upon the ground that it is incompetent, immaterial and irrelevant and calls for the conclusion of the witness as to what he deems essential. Not proper redirect.

Objection overruled.

Question read.

A. The essential paper I would say was the contract.

Q. As supporting the theory?

4085 A. As supporting the theory—from which the theory was derived.

Q. Now, as indicating the accounting practice between the parties what did you regard as the essential elements?

A. The contract and the testimony of Dockendorff.

Q. So that you could rest your theory upon the contract and the testimony of Dockendorff alone and the accounting practice upon the same things?

A. Yes, sir.

Q. To what extent then, to your mind as an account, were the remittance and collateral sheets

4086 valuable?

A. As indicating the application of the theory.

Q. In practice?

A. In practice.

Q. To what extent was the account current valuable to your mind as an accountant?

A. The same purpose.

Q. To what extent were the pink slips valuable to your mind as an accountant?

A. The same purpose.

Q. To what extent was the system of ledger cards valuable?

A. Also for the same purpose.

Q. To what extent were the bank sheets? 4087

Mr. Wolf: Objected to on the ground that the system of bank sheets has not been proven.

Mr. Cohen: I will make the question "To what extent was the form of the bank sheets valuable."

Mr. Wolf: I ask counsel if he means anything beyond the blank bank sheets.

After argument.

Master: Mr. Cohen is entitled to show whether he relied upon the entries on the bank sheets.

Question read. 4088

A. I would say to the same extent, for a similar purpose.

Q. What do you mean by that, for a similar purpose?

A. As explanatory and corroborative.

Mr. Wolf: I think at this time it is proper to know what is meant by the form of bank sheets; I don't know whether they mean this piece of paper without any entries on it or whether they mean the system of bookkeeping on the bank sheets and I cannot make any motion until that is determined. 4089

By the Master:

Q. What do you understand by the words the form of bank sheet in that question?

A. That sheet of paper, Exhibit P1205 and the headings thereon.

Q. Without regard to any of the entries?

A. With my opinion of the entries that would be made in view of the headings on the sheet.

4090 By Mr. Cohen:

Q. You mean without reference to the actual figures?

A. Without reference to the actual figures.

By Mr. Wolf:

Q. Do you mean to say that you relied upon Exhibit P1205 in precisely the same form in which it is now before you, that is, without any figures on and without any method of computation or distribution of the figures?

A. I think I can answer that yes, although the
4091 sheets that I saw did have figures on them.

Q. Now, do you mean to say then that your testimony is based only, that your report is based only on the blank sheets precisely in the form of Exhibit P1205?

Mr. Cohen: Objected to as not proper cross examination at this time.

Objection sustained.

Q. Do you mean to say that the form of bank sheet Exhibit P1205 in precisely the same form it is in now was corroborative without your examining the entries contained on the bank sheets or the method of distribution of the entries?

4092 A. I think I have answered that. I think I can say yes to that question because of the fact that the headings of the columns indicate the entries that would be made and the distribution of the entries, although the sheets that I did examine had figures on them.

Q. Didn't you testify, Mr. Stern, that you came to the conclusion that Dockendorff retained the overdues because of certain entries made on these bank sheets?

Mr. Cohen: Objected to as immaterial.

irrelevant and incompetent and not proper cross examination at this point. 4093

Overruled.

A. No, sir. What I testified to as I recall it is that the entries on these bank sheets and the entries on the remittance sheets and the recapitulation of the remittance sheets corroborated theory that I obtained from the contract.

Q. Well, that theory was that Dockendorff retained the overdues?

Mr. Cohen: Objected to upon the ground that it is incompetent and immaterial at this point and not proper cross examination. 4094

Question withdrawn.

Q. Will you tell me precisely what there is in this bank sheets in precisely the form as you now see Exhibit P1205 that corroborates your theory that Dockendorff was the owner of the overdues, without consultation of the entries?

Mr. Cohen: Objected to upon the ground that it is not a proper subject for cross examination at this point.

Overruled.

Exception.

Question read. 4095

A. There is nothing, Mr. Wolf, but there were other theories involved besides the overdues.

Mr. Wolf: I move to strike out the answer.

Mr. Cohen: I make the additional objection that I have examined the witness as to his report and to what extent he relied upon this document and counsel was merely permitted to examine upon that point.

Overruled.

4096 By Q. Mr. Stern, do you say that your theory was or was not corroborated by the entries or the form of entries contained upon the bank sheets?

Mr. Cohen: Objected to upon the ground that it is not proper cross examination at this time by counsel for the Trustee.

Objection sustained.

Q. Do you say, Mr. Stern, that the bank sheets itself, Exhibit P1205, without your ever having seen any entries on the bank sheet, was or was not corroborative of the theory advanced in your report?

4097 A. It is pretty hard to disassociate the two propositions considering the fact that I did see entries, but I think so.

Mr. Wolf: We insist that inasmuch as this witness is unable to determine whether or not the entries did or did not assist him in coming to the conclusion that they were corroborative, that he cannot be interrogated until the form of entry on the bank sheets is proven.

Master: I will let that stand. I will not strike it out.

4098 By Mr. Cohen:

Q. Suppose you eliminate for the purposes of your present testimony both the form of bank sheet and any entries which you may have seen upon any bank sheets, what change if any would you make in any of the theories contained in your report?

A. None.

Q. Suppose you eliminated everything that you saw in Dockendorff's office at any time from consideration at this point, what changes if any would you make in the theories elucidated in your report?

A. None.

TORN PAGE

Q. Did you in preparing the specimen day's transactions on pages 5 and 6 endeavor to make any actual computation of actual transactions? 4099

A. No, sir.

Q. Did you endeavor to do anything more than to elucidate and explain the theory which you had adopted as the result of your examination of the exhibits and the testimony?

A. None, except perhaps to elucidate the relation of the various items to each other.

Q. Will you please explain why, if the contract and the exhibits in evidence are sufficient for you to base your theory of your report as you testified, why you went to the records in Dockendorff's office? 4100

Mr. Wolf: Objected to unless the records are specified.

Objection overruled.

Question read.

A. For the purpose of finding out whether those records were kept in accordance with my theory of the contract.

Mr. Wolf: I object and move to strike out the answer unless the records themselves are in evidence or are offered in evidence

Motion denied. 4101

Q. Now, Mr. Stern, as an expert accountant, when you made your criticism of the schedules prepared by Suffern & Son did you take into account the ordinary method employed by accountants in making comparative tables showing the condition of collateral held by a lender at various dates?

Mr. Wolf: Objected to upon the ground that it is leading and not proper redirect.

Overruled.

4102 A. I don't think I understand your question.

Mr. Cohen: Showing the comparative proportion of collateral to loan?

A. I don't think I quite understand you yet, Mr. Cohen.

Q. Mr. Stern, to make a comparison between the amount of security proportionately to loan on a particular date with amount of security proportionate to loan on another date, how would you as an expert accountant prepare tables?

A. By showing the amount of the loan on the respective dates and the amount of security upon the
4103 respective dates and the percentage of loan to security.

Q. Would you endeavor as an expert accountant to ascertain what the actual amount of security was on hand at the particular time that you were called upon to prepare such schedules?

Mr. Wolf: Objected to as incompetent and calling for a conclusion.

Overruled.

A. I would unless specifically instructed by counsel to confine my examination to certain particular documents.

4104 Q. Suppose you had not been so instructed, what would you do?

Mr. Wolf: Same objection.

Overruled.

A. Then, under those circumstances I would examine all documents available, would advise counsel what documents there were that should be examined and if it were possible to prepare a statement which could go into evidence upon all of such documents; in other words, if all of such documents were admissible, upon which point I would

ask counsel's opinion, I would then proceed to use as many of such records as I could for that purpose. 4105

Q. Now, for the purpose of showing whether or not a banker's condition as to security held by him was improved between the first of August and the 29th of November, if you had learned that part of the security was destroyed or cancelled and that documents or books were available to you for the purpose of ascertaining the amount would you have examined such documents or books before making a statement of the collateral or security condition on that date?

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant and calling for the conclusion of the witness and containing an assumption not warranted by the evidence. 4106

Overruled.

Mr. Wolf: I want to state on record that the testimony and record shows that the books of the Schwab-Kepner Company were the only information we had of anything and if Mr. Cohen will allow those books to go into evidence then I can concede that they are available to the accountants.

Mr. Cohen: If we are to sum up upon all of the inferences that may be deduced from the evidence I should like to have opportunity to quote to your Honor the examination which Mr. Wolf conducted this morning by which he sought to tie down this witness to the use of the terms balance security account. It seems to me that I am entitled to ask any hypothetical question that will show why this witness made his criticism and what the basis of it was; what he would have done if certain information had been 4107

4108 made available to him. It is not true that the cancellations appear in the books of the Schwab-Kepner Company, it appears in the testimony of Mr. Williams. The testimony of Mr. Suffern shows that he went to Williams for certain information and shut his eyes and ears to further evidence.

Objection overruled.

A. If the report were submitted for the purpose of being put in evidence I would examine all books, documents, testimony and everything that had been admitted in evidence together with anything that in the opinion of counsel was admissible in evi-
4109 dence for the purpose of determining as far as possible what the actual facts were.

Q. Now, if the record of the testimony in the case disclosed the fact that the collateral consisted of accounts receivable that counsel contended was destroyed by reason of the failure to ship the goods from the bleacheries before charging the banker with the amount of security at the close of the transaction would you have made effort to ascertain the amount of security that had been cancelled and destroyed by reason of the failure to ship the goods from the bleacheries?

4110 Mr. Wolf: Same objection.

Overruled.

A. Yes, sir, provided the documents or the information were admissible as evidence.

Q. Referring now to the $120,000 referred to on page 13 of your report, does that include the D. O. Tatum and Feguson-McKinney accounts receivable?

A. I don't know.

Q. If it is not included, to what extent would your report at pages 13 and 14 be modified?

A. I would make an additional deduction from the collateral as of the dates that the various in-

voices were assigned to Dockendorff, upon the as- 4111
sumption that the invoices were bogus invoices.

Q. Assuming that there were overdue accounts, XC collateral and accounts receivable where the merchandise was not yet shipped from the bleacheries, what, in your judgment would be the essential factors to ascertain in order to make a comparative statement showing the percentage of loan to security on the first of August, as compared with the percentage of loan to security on the 28th of November?

A. To ascertain as far as possible what the actual collateral held on those dates was a determined by a legal theory, upon which point I would ask 4112
counsel to advise me.

Q. And could you prepare an exact comparative statement showing the percentage of those specific dates without having those factors?

A. What factors, Mr. Cohen?

Q. The factors you have just stated?

A. No, sir.

Q. Did you endeavor at any point in your report to do more than state the percentages as they appeared from the report of the accountants for the Trustee?

A. You mean as far as the relative condition of the collateral goes? 4113

Q. Yes?

A. No, sir.

Q. And you found that according to their own report, that instead of Dockendorff's condition being improved as to security it had grown worse, did you?

Mr. Wolf: Objected to as calling for a conclusion and as being leading and not proper redirect.

Objection sustained on the ground that it is leading.

4114 Q. What did you find from the report of the accounts for the Trustee with reference to the improvement—

Master: Don't you think, Mr. Cohen, that follows from the percentage statement?

Question withdrawn.

Q. Now, you were examined on cross examination by Mr. Wolf with reference to the system on the ledger cards in Dockendorff's office, as an expert accountant, what would be the ordinary and usual entries to be found on such cards if, when an overdue account was charged against the loan
4115 account of the Schwab-Kepner Company it ceased to be treated as the collateral of Dockendorff and became the collateral of the Schwab-Kepner Company?

Mr. Wolf: Objected to upon the ground that it calls for the conclusion of the witness upon the most vital and important issue in this case, a conclusion as to what should be shown on the ledger cards of Dockendorff; it is a system which has not been proven and is not binding upon the Trustee in any event.

Objection overruled.

4116

A. The entry would be a credit upon the account of such overdue account which after being made would show the balance to have been liquidated and no balance remaining open.

Q. How was the account current affected by remittances for ordinary accounts paid at maturity by the customer?

A. Whatever remittances were received would be credited to the account current.

Q. How was the account current affected by remittance for accounts overdue and so-called charged back?

A. When the remittance was received it would, 4117
in the same manner, be credited in the account current.

Q. So that the account current treated the remittances from accounts receivable not charged back in exactly the same way as remittances from accounts receivable that were charged back, is that so?

A. Yes, sir.

Q. What did you mean by your testimony in answer to Mr. Wolf's questions by the expression 100% of the amount, with reference to remittances for overdue accounts collected by the Schwab-Kepner Company? 4118

A. I meant that inasmuch as the overdue accounts were not included in the current collateral and therefore inasmuch as the amount upon which the loan was computed did not include the overdue accounts, therefore when those overdue accounts were remitted it reduced the actual amount of the loan by the amount of such remittance but did not reduce the amount upon which the loan was computed and therefore, inasmuch as the amount to which the Schwab-Kepner Company was entitled—in other words the computation of the loan which would be warranted would remain the same and the loan itself would be reduced by the 4119
amount of such remittance and an advance would then be warranted of 100% of such remittance.

Q. In short, you mean that the loan account between the Schwab-Kepner Company and Dockendorff would be reduced to the extent of the remittance for the accounts receivable that were overdue, isn't that so?

A. Yes, sir.

Q. And the colateral account would be reduced to the extent that that collateral was closed out by the payment of the account, isn't that so?

4120 A. Yes, sir.

Q. And since Dockendorff had on hand collateral to a certain amount and since the loan account had been reduced to the extent of 100% received for that account receivable, Mr. Dockendorff, if he desired to keep up the same percentage was then justified in advancing exactly 100% of that amount to the Schwab-Kepner Company upon your theory?

Mr. Wolf: Objected to as leading.

Objection sustained.

Q. If an overdue account had been charged
4121 back to the Schwab-Kepner Company in the sense of transferring that security to them, what did you find in the remittance sheets or any other of the exhibts in evidence that justified to your mind as an expert accountant the remittance of that account when collected by the Schwab-Kepner Company to Dockendorff?

A. I don't know of any.

Q. Was there any advantage indicated to your mind as an accountant to the Schwab-Kepner Company by the remittance to Dockendorff of the accounts receivable that were overdue if when the overdue accounts, because charge backs,
4122 they no longer became the collateral of Dockendorff?

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant, calling for a conclusion of the witness.

Objection overruled.

Question read.

A. I don't know of any.

Q. In other words, Mr. Stern, the Schwab-Kepner Company could have retained that remittance and gotten the 100% without going through

the process of turning it over to Dockendorff and getting another 100% in its place? 4123

Mr. Wolf: Objected to as being a summing up by counsel and as being leading. Objection sustained.

Sworn to before me this 19th day of May, 1911.

Adjourned to Friday, May 26th, 1911, at 10.30 A. M.

UNITED STATES DISTRICT COURT, 4124

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, as Special Master, at No. 165 Broadway, New York City, on Friday, May 26th, 1911, at 10.30 A. M. 4125

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner. RALPH WOLF and GARRARD GLEN, Attorneys for Receiver and Trustee.

ALFRED J. STERN, recalled.

By Mr. Cohen:

Q. I call your attention to the fact that at page

4126 1500 of your testimony you were asked these questions and gave these answers:

"Q. Now, will you please tell me what books, records, papers or documents you examined as a basis of the statement contained on page 3 of the report of April 3rd, 1911, when you say that you have examined the method of treating such accounts by J. E. Dockendorff?

A. As I understand your question it is confined now to the consideration of the question of overdues?

Q. No, it is not.

4127

A. Well, the entire paragraph refers the overdues and I can't answer the question.

Q. You say 'Upon our part we have examined the contract between J. E. Dockendorff and the Schwab-Kepner Company, we have examined the method of treating such accounts by J. E. Dockendorff'; when you say such accounts do you not mean the accounts covered by the contract between J. E. Dockendorff and the Schwab Kepner Company?

A. No, sir.

4128

Now, I call your attention to Exhibit P1202, page 3, and also to the two preceding paragraphs of this sentence which were stricken out of your report by consent of counsel, and to the last three lines of Paragraph 3 and the succeeding paragraph on page 4, and ask you in what sense or in what connection you used in this report the words 'Upon our part we have examined the contract between the Schwab-Kepner Company and J. E. Dock-

endorff, we have examined the method of 4129
treating such accounts by J. E. Dockendorff"?

Mr. Wolf: I object because the witness on page 1501 testified in answer to 'What accounts do you refer to,' 'The credit overdue accounts.'"

Objection overruled.

A. I used those words in discussing the second limitation which Suffern & Son inserted in their report, namely that all credit overdues were considered as being a cancellation of collateral after the amount had been charged to Schwab-Kepner 4130
by J. E. Dockendorff, and I cited the records of Dockendorff and the fact that I had examined them for the purpose of showing what information I had received and as furnishing the basis for the expression of my opinion that there was no justification afforded by any records I had examined including the records of Dockendorff for the limitation or for the assumption of Suffern & Son.

Mr. Wolf: I move to strike out the answer as not responsive, all after the words referring to the second limitation, etc.

Motion denied. 4131

Q. Were those words you have just been asked about, namely, "Upon our part we have examined the contract between the Schwab-Kepner Company and J. E. Dockendorff, we have examined the method of treating such accounts by J. E. Dockendorff" a complete sentence in the original report which you represented?

A. It was not.

Q. What was the complete sentence as you originally gave it?

4132 Mr. Wolf: Objected to, incompetent, immaterial and irrelevant; not proper redirect.

Objection sustained.

Mr. Cohen: I offer this evidence for the purpose of showing the relationship which this sentence in the report bore to the original report as prepared by the accountant. Counsel has assiduously endeavored to make it appear that the witness's theory rests upon investigations that he made of Dockendorff's records when the only connection in which the witness made his
4133 statement was in connection with a criticism of the statements in the report of Suffern & Son, and, while your Honor has the complete report before you, by virtue of our stipulation that portion of the report which explained the statement referred to by Mr. Wolf on page 1501 is not actually a part of the record, but is only treated as a part of our brief, and therefore in fairness to the witness it seems to me that merely for the purpose of disclosing to the Court above what has actually been disclosed to your Honor, that that is only
4134 half of a sentence, a part of the paragraph originally prepared, we should be permitted to show it now.

Master: I think you have shown that the paragraph before and succeeding was stricken out, that it wasn't the entire sentence.

Q. Now, in making up your criticism of the report of Suffern & Son, which was received in evidence and submitted to you, did you, as an expert accountant, find any theory of accounting or accounting practice that in your opinion justified,

from the testimony taken in this case, which you read, and the exhibits in evidence in this case upon which the report of Suffern & Son was prepared, the treatment of credits overdue as a cancellation of collateral after the account has been charged to Schwab-Kepner by J. E. Dockendorff? 4135

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant and not proper, asking for the conclusion of the witness.

Overruled.

A. No, sir.

Q. Do you know of any theory of accounting or accounting practice that would justify, from the exhibits referred to in the Suffern report, the deduction made in that report that credit overdues were to be treated as a cancellation of collateral after the account had been charged to Schwab-Kepner Company? 4136

A. No, sir.

Q. At page 1482 and at the other pages in your testimony as well as in your report, Mr. Stern, you have used the words "current collateral," did you find those words in the exhibits in evidence?

A. No, sir.

Q. Did you find that in any part of the testimony? 4137

A. I think not.

Q. Did you find those words used in the contract?

A. I think not.

Q. Then those words were words of your own adoption?

A. Yes, sir.

Q. And used by you for the purpose of making clear your theory?

A. Used by me in place of or as an abbreviation, or to express in two words what otherwise would have to be expressed in a number.

4138 Q. It was devised by you as a short expression for something that would have taken more than one word to express?

A. Yes.

Q. Precisely what did you mean by the words, "current collateral?"

A. I used that term to include all collateral except XC and overdue and to be equivalent to the terms used in the contract, the accounts of which Dockendorff approved, or the accounts upon which the amount of loan was based.

Q. Now, you have used an expression "the amount of loan was based," and you have been
4139 asked concerning your understanding of the contract—what did you carry in mind in formulating your theory as to the meaning of the words "the collateral upon which the amount of the loan was based?"

Mr. Wolf: I object to that, what the accountant carried in mind; I haven't any objection to what he did, or what his theory was.

Mr. Cohen: I will amend the question in this respect, "For the purpose of formulating your theory, what did you assume to be the meaning of the words."

4140 Mr. Wolf: How do you know that he assumed anything?

Mr. Cohen: If you assumed anything?

Question read as follows:

Q. Now, you have used an expression, "the amount of loan was based," and you have been asked concerning your understanding of the contract; for the purpose of formulating your theory, what did you assume to be the meaning of the words, if you assumed anything?

A. My understanding was that the amount of

the loan was based upon the accounts which Dock- 4141
endorff approved and that the accounts which Dockendorff approved did not include any accounts which were withdrawn, having been termed in this proceeding overdues or charge backs.

Q. You have several times used the expression "accounts withdrawn," do you mean withdrawn from collateral held by Dockendorff when you use that expression?

A. I mean withdrawn from the collateral of which Dockendorff approved. I think that was the expression used in the contract.

Q. Then when you use the expression current collateral and collateral withdrawn, you have in 4142
mind, have you, the provision of the contract as to the method of computing the amount of the loan?

A. Yes, sir.

Q. And did you mean in using any of these expressions to exclude that collateral from the collateral held by Dockendorff as security for the loan?

A. No, sir.

Q. In other words you were distinguishing between the method of computing the amount of the loan and the fact that the collateral standing as security for the loan?

Mr. Wolf: Objected to as leading. 4143
Sustained.

Q. Did you take any distinction in the formulation of your theory between the amount of collateral which Dockendorff held as security for the loan and the basis of the computation which he made for the purpose of determining the amount to be advanced?

A. Yes, sir.

Q. And what was the distinction that you made?

A. The distinction was this, that in the collateral account I showed all of the collateral, including the

4144 current collateral and also the XC' and overdue collateral and I showed the current collateral as being the collateral upon which the amount of the loan is based and showed the manner of computation and I showed the XC' and overdues included in the current collateral but as having no loan value.

Q. Did you regard the payment of the Schwab-Kepner Company of any overdue accounts either by customers' checks or by their own checks as affecting the collateral account so far as the overdue accounts were concerned?

4145 Mr. Wolf: The witness hasn't testified to any payment by Schwab-Kepner Company check.

Question withdrawn.

Q. Now, taking the contract, Mr. Stern, do you know of any accounting theory as an expert, that would justify the inclusion of the XC' accounts in the collateral account and the exclusion of the overdues, so-called charge backs?

A. No, sir.

Q. Did you understand the terms charged back in formulating your theory and making your report to mean anything more than that the Schwab-Kep-
4146 ner Company was obligated to reduce its loan to the extent of the amount of that account?

Mr. Wolf: Objected to as leading and already answered.

Objection sustained.

Q. You have testified, Mr. Stern, at pages 1511 and 1512 and 1514, you referred to the actual charging back of the accounts and also to the payment of the accounts, what did you mean by that?

Mr. Wolf: Do you mean on these particular pages or by the use of the terms?

Mr. Cohen: The use of the terms.

A. I meant to bring out the distinction between 4147
the charging back of an account, as entered upon the charge back sheets at the time it became overdue or shortly thereafterwards, and between the actual payment of the account by the customer at some time subsequent thereto.

Q. You have used the expression "the charging back of the account," do you refer to anything with reference to the collateral account when you use that expression?

Mr. Wolf: Objected to, leading.
Objection sustained.

Q. What if any reference do you intend to make 4148
to the collateral account when you use the expression, "charging back of the account?"

A. I used the expression charge back because that is the term that has been used in the proceedings here to indicate those accounts which were withdrawn according to the contract from the accounts upon which the amount of the loan was based and such accounts as were withdrawn from what I termed current collateral and became to my mind overdue collateral in the hands of Dockendorff.

Q. So that the term charge back had reference only to the differentiation between what you call 4149
current collateral and old collateral held by Dockendorff?

Mr. Wolf: Objected to, leading.
Overruled.

A. Yes, sir.

Q. Then will you explain the difficulty which you had at page 1512 of the testimony in answering categorically the question put to you by the counsel for the Trustee, "Can you, or could you, by an examination of the account current pick out any item in that account current either debit or credit which represents in whole or in part the actual charging

4150 back of an overdue or the actual payment of an overdue charged back, and I ask you to answer that question, yes or no?"

A. I meant that the account current would not show the actual charging back of any accounts as such accounts; at the same time that the amount advanced on any particular day might depend upon the amount of overdues that were charged back; I also meant that the account current showed collections from customers of the Schwab-Kepner Company and that these collections as shown in the account current were supported by remittance sheets, the remittances upon accounts that had been
4151 charged back were separately listed.

Q. Did you distinguish in answering the questions between the liquidation of the account by the customer's check after the overdue period and the act of Dockendorff in withdrawing the account from what you called current collateral?

A. I tried to do so.

Q. Why did you make such a distinction in answering the question?

A. Because they are two entirely separate transactions.

Q. Now, will you please elucidate that a little further from an accountant's point of view?

4152 A. As I take it when an account was received by Dockendorff and he approved of it, it became a part of what I termed current collateral; that was one transaction; when that account became overdue and was withdrawn by Dockendorff from the current collateral, that was a second transaction; and when this account which was withdrawn subsequently became paid by the customer, it was a third transaction. Therefore, when talking of overdues and of payments and charge backs, the three transactions must be entirely distinct so as to obtain a clear idea of the situation.

Q. Which of these three transactions would appear in the account current?

A. The actual payment of the account by the 4153
customer, in other words the third transaction.

Q. Would the withdrawal of the account from what you call current collateral appear in the account current?

A. It would not.

Q. At page 1534 the record appears as follows:

"Q. Do you consider that the contract says that the overdue shall be withdrawn and not paid by the Schwab-Kepner Company?

Mr. Cohen: Objected to upon the ground that it contains two questions.

Overruled.

A. No, I think the contract says that the 4154
overdues shall be withdrawn and paid by the Schwab-Kepner Company.

Q. So two things must be done, they must be withdrawn by Dockendorff and paid by Schwab-Kepner Company?

Mr. Cohen: Withdrawn from where?

Mr. Wolf: The witness has used the word withdrawn.

A. In my opinion the contract provides that upon the withdrawal the Schwab-Kepner Company shall be obligated to pay."

Q. In what sense did you use the word with- 4155
drawn at that page?

A. I used the word withdrawn in the same sense as it was used in the contract, namely, withdrawn from the accounts upon which the amount of the loan was issued, or what I have termed current collateral.

Q. Did you use it in the sense of meaning a withdrawal of the account from the collateral as collateral held by Dockendorff?

Mr. Wolf: Objected to, leading.

Overruled.

4156 A. No, sir.

Q. At page 1556 you answered, "The difficulty I have in answering that is this, that the records to which you refer, as I understand, are merely the charge back slips, the ledger cards and the remittance sheets, and these records of themselves do not —taken by themselves, do not concern themselves with the question of the distinction between the current collateral upon which the amount of the loan is computed and the non-current collateral."

"Referee: Then from these records alone you didn't find any records justifying this treatment of the overdues in the specimen day's transactions?

4157

A. That is correct."

Q. What did you understand from the Referee's question and from your answer at that point?

Mr. Wolf: Objected to unless Mr. Cohen means what he meant to say.

Overruled.

A. The idea in my mind at this point of the examination was that the Referee was directing his question to the entire form of the specimen day's transaction and that the examination was being

4158 conducted with a view to finding out whether any one form or any two forms taken apart furnished the basis of the specimen day's transactions and if the specimen day's transaction was compiled with these records that had just been referred to as the basis.

Q. Was there anything in the records that you found that justified the treatment of the overdues in the specimen day's transactions as you did, taken in connection with the other documents in the case?

A. I had already testified to that in the previous

pages, that the ledger cards, for example, showed 4159
the overdues were still kept open on Dockendorff's
records and to my mind that indicated that they
still remained his collateral; but what I under-
stood from this question was as to whether the
entire theory of the overdues as treated in the re-
port was obtained from these records of Docken-
dorff's exclusively.

Mr. Wolf: You mean these records men-
tioned?

A. Yes, the charge back slips, the ledger cards
and the remittance sheets.

Q. I think you have already testified, Mr. 4160
Stern, that the remittance sheets did assist you
in formulating the theory upon which you based
the specimen day's transactions as an illustration,
have you so testified?

A. I think the testimony was that they were
corroborative of the theory which I had formed,
yes.

Q. So to that extent the records did justify
the treatment of the overdues in the specimen
day's transaction, as you treated them?

Mr. Wolf: Objected to, leading.
Overruled.

4161

A. Yes, sir.

Q. At page 1568 you used the expression in
answer to the question asking you for your un-
derstanding of the difference between the X'
accounts and the overdues charged back "of
which Dockendorff did not approve at the time
they were received and which were therefore
taken into computation as having no loan value,"
what did you mean by the words, "Loan value"?

A. That inasmuch as the amount of the loan
that would be warranted was to be computed

4162 upon the collateral of which Dockendorff approved, that the inclusion of these XC and overdue accounts which represented collateral which Dockendorff did not approve, would not increase the amount of the loan which would be warranted.

Q. Did you use the expression "having no loan value" to indicate that you regarded this character of accounts as not being part of the collateral?

A. No, sir. I used the term loan value to express the amount which Dockendorff was obligated to loan under the contract, the amount of loan warranted under the contract.

4163 Q. At page 1569 Mr. Wolf asked you whether you had ever been informed that the letters XC meant excluded collateral and you answered that you had not. Had you ever been informed that the letters XC meant excess collateral?

A. No, sir.

Q. At page 1569 you were asked whether you had ever in your capacity as an expert accountant seen those letters used by a banker in dealing with his client, do you know of any distinct or certain accounting meaning to be attached to the letters XC?

A. No, sir.

4164 Q. At pages 1581 and 1582 you were asked whether your criticism of the Suffern report was to the effect that the report was not a full and complete report or that you took issue with them respecting certain matters contained in the report and your answer was, "I would say both, Mr. Wolf," and you stated that you did not consider it a full and complete report because it seemed to you that Suffern & Son had confined their attention to certain evidence and certain documents, whereas there were other documents available for examination, and to that extent you

would say that it was not complete; did you mean by that answer to exclude from consideration any criticism of the inferences that Suffern & Son drew from the documents that were in evidence? 4165

Mr. Wolf: Objected to, leading.

Overruled.

Mr. Wolf: I object further on the ground that it does not appear that in those answers the witness says anything about inferences that Suffern & Son drew.

Overruled.

A. No, I think these matters are covered in my report, and I mean to stand back of every word that is in that report. 4166

Q. In your report did you make any criticism of any inferences that Suffern & Son drew from the exhibits that they had?

Mr. Wolf: Objected to, calling for the conclusion of the witness and the report speaks for itself.

Objection sustained.

Q. Have you any criticism to make of the inferences that Suffern & Son drew in their report from the exhibits that were in evidence at the time they made their report? 4167

A. Yes, sir.

Q. And what is that criticism?

Mr. Wolf: I understand these are criticisms of the inferences in Suffern & Son's report?

Mr. Cohen: Based on the exhibits and the testimony they had before them.

A. First the assumption by Suffern & Son that credit overdue was considered as being a cancellation of collateral after the amount had been charged to Schwab-Kepner by J. E. Dockendorff; second,

4168 the assumption that overdues were paid by the Schwab-Kepner Company's checks; third, the tabulation of Suffern & Son covering dates of shipments are not open to criticism as long as the records from which they were compiled are shown accurate, as far as being conclusive proof of shipments I think the records upon which the original report is based are insufficient; fourth, as far as furnishing proof of the dates upon which the accounts came into existence the data upon which their amended report is based is insufficient.

Q. Without specifying them are there any other inferences that they made in the report that you
4169 criticise?

A. I think not.

Q. Now, calling your attention to page 1583 of the testimony:

> "Q. So that your criticism is that they did not resort to papers not in evidence?
>
> A. The basis of the criticism, yes, sir.
>
> Q. The basis of the criticism that their report is not a full and complete report is that they did not resort to certain papers, books and documents not in evidence, is that correct?
>
> A. Yes, sir."

4170

Do you desire now to modify or simplify your answers to those questions?

A. As I understood those questions at that time they had reference to the fact of the completeness of the report and that I considered it incomplete in that all the documents available were not examined. I think a report could be a complete report and still be compiled upon an erroneous theory. I think with the answers that I gave this morning that I can let the answers given at the previous hearing stand.

Mr. Wolf: I move to strike out, not responsive. 4171

Motion denied.

Sworn to before me this 26th day of May, 1911.

Adjourned to Wednesday, May 31st, 1911, at 10:30.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

In the Matter of SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

4172

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, Special Master, at No. 165 Broadway, New York City, on Wednesday, May 31st, 1911, at 10:30 A. M.

PRESENT: 4173

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.

RALPH WOLF and GARRARD GLEN, Attorneys for Trustee.

ALFRED J. STERN, recalled.

By Mr. Cohen:

Q. Mr. Stern, you were examined by Mr. Wolf with reference to the specimen day's transactions appearing in your report which is in evidence, will you please explain in a little detail what your pur-

4174 pose was in making that specimen day's transaction in your report?

A. My purpose in preparing a specimen day's transactions was for the purpose of showing the various items entering into the day's transactions and elucidating them for the information of yourself and Mr. Wolf and the Court, showing that there were two accounts to be considered, the collateral account and the loan account and the relation of the various items, the various transactions of the two accounts and the manner in which they would be affected thereby.

Q. And I think you stated to Mr. Wolf that you
4175 didn't copy that specimen day's transaction from any book or record that you found in Dockendorff's office?

A. Yes, sir.

Q. That is correct?

A. That is correct.

Q. The specimen day's transaction was then merely an illustration of the theory which you adopted in making your report?

A. Yes, sir.

Recross examination by Mr. Wolf:

Q. Did you find that Dockendorff in his records
4176 kept a so-called balance security account?

A. No account that was termed balance security account, no sir.

Q. Any account that to your mind as an accountant would mean a balance security account, no matter what it was termed in Dockendorff's books?

A. No, sir.

Q. Did you find in Dockendorff's books any loan account?

A. Well, the loan accounts were contained upon the bank sheets and also the collateral deposited with the bank, that was also contained on the bank sheets.

Q. You mean the entries of the loan account were on the bank sheets? 4177

A. I mean just what I stated.

Q. Is that what you mean by that answer or do you mean something else?

Mr. Cohen: First you ask if he found any entries and then you say the entries.

Question read.

A. I mean that there were various bank sheets like the form submitted in evidence and that upon those sheets the collateral deposited in the banks was entered and that the collateral which was drawn from the bank or which was paid was entered and that upon these bank sheets also the advances that were made on these accounts were entered and the accounts that were paid were entered so that these sheets show the collateral that had been received and collateral withdrawn from the bank and also upon the sheets was shown the amount advanced and the amount repaid so that the sheets showed the balance of collateral held by the bank and also the balance of the loan account with that bank with the Schwab-Kepner Company. 4178

Mr. Wolf: I move to strike out the answer as not responsive.

Mr. Cohen: Objected to, the witness was called upon to explain what he meant by the previous answer indicating the witness's understanding of the facts and the next question called upon him for a further explanation of what he meant. 4179

Question withdrawn.

Q. Mr. Stern, you have testified, have you not, that the loan account as understood by an accountant is an account showing the indebtedness of one party to another arising as the result of money advanced?

4180 A. That is my recollection, yes.

Q. Did you find any account in Dockendorff's books which within your definition of a loan account is what you would call a loan account?

A. I found no account showing the entire loan but a number of accounts which in the aggregate show the entire loan.

Q. That is, the loan from Dockendorff to the Schwab-Kepner Company?

Mr. Cohen: I object to the question, the first question in the series calls his attention to his definition of a loan account and by adroitly limiting the question counsel is at-
4181 tempting to commit the witness to a categorical answer.

Objection overruled.

A. I will answer that yes without committing myself to the legal proposition of whether the loan was made by Dockendorff or the banks, which is the question in my mind.

Q. You say that you found a number of accounts which would show the entire loan, in what books or records were they kept?

A. They were kept, as far as the loan was made from the collateral deposited with the banks they
4182 appeared upon the bank sheets and as far as there was an excess loan it appeared in another account with the Schwab-Kepner Company.

Q. What was that account designated?

A. Schwab-Kepner Company, I believe.

Q. In Dockendorff's books?

A. Yes, sir.

Q. What book of account was that kept in?

A. The ledger of Dockendorff.

Q. Did that ledger have any other entries in it?

A. Yes, sir.

Q. With his other customers? 4183

A. Yes, sir.

Q. There was a separate account in that ledger with the Schwab-Kepner Company?

A. Yes, sir.

Q. Is that ledger account in evidence?

A. No, sir.

Q. Did you find in any of the books of Dockendorff a so-called security account?

A. No, except in so far as the bank sheets showed the security held by the banks.

Q. Were the only entries respecting the security account contained in the bank sheets?

A. Why, I can't answer that yes, the entries 4184
respecting the securities were also noted upon the collateral sheets, and the remittance sheets.

Q. Was there any account in Dockendorff's books which showed additional security received from time to time?

Mr. Cohen: What do you mean by additional security?

Mr. Wolf: I mean what he has testified to before, if the question isn't clear the witness can say so.

A. I don't think it is quite clear.

Q. What don't you understand about it? 4185

A. I think it is altogether clear that the security was received by Dockendorff from time to time as shown by the collateral sheets and I think it is also reasonably clear that what security was given to the banks at various times appeared upon the bank sheets, and further than that in view of the fact that there is no account showing the total security, and in view of the fact that part of the security was sent to the bank and appears upon the bank sheets, I can't give you a categorical answer.

4186 Q. You testified at page 1635—

"Q. How may a security account be increased?

A. By the deposit of additional security.

Q. How may a security account be reduced?

A. By the payment of some of the security and by the withdrawal of some security."

Now, I want to know whether you found any such security account in Dockendorff's books?

4187 A. No, except in so far as the bank sheets showed the security deposited in the banks.

Q. And you understand that the bank sheets are not in evidence?

A. My understanding is that the form and method is in evidence but the sheets themselves with the entries on them are not.

Q. Do you understand that the form of keeping them and the blank bank sheets are in evidence, with the heading on them?

A. I understand that the blank sheets with the headings on each column are in evidence and that I have testified to the method of keeping
4188 them and what they are supposed to indicate.

Q. Do you mean to say that that is the basis of your testimony respecting the bank sheets, your testimony as to how they were kept?

A. I don't think I quite understand that.

Q. Do you understand that there is any testimony respecting the bank sheets other than your testimony as to the manner in which the bank sheets were kept?

A. I think Mr. Dockendorff also testified as to the manner in which the bank sheets were kept.

Q. Can you call attention to the specific pages of his testimony where he testified about the entries on the bank sheets? 4189

A. I think that the entire system of bookkeeping of Dockendorff was covered in the testimony from page 266 on through that hearing.

Q. To the end of that hearing?

A. I think so, that is my recollection.

Q. Was it taken up at any other hearing as you understand it?

Mr. Cohen: I object, I don't think it is fair or proper to examine this witness as to the record of the testimony.

Objection overruled. 4190

A. I don't know, I don't recall it.

Q. You testified at page 1635—

"Q. Now, when security is withdrawn from a security account what are the ordinary entries that would be made in a book of account by an accountant.

A. Assuming that the security received was entered as a debit, the security withdrawn would be entered as a credit."

Is that right?

A. Yes, sir. 4191

Q. Did you find any such entries in the books of Dockendorff?

A. No, except in so far as the bank sheets showed the security deposited with the banks and the security withdrawn from the banks. Would that be shown by the form of bank sheets as now in evidence?

A. I think so.

Q. Do you mean to say that the form of that bank sheet as now in evidence, Exhibit P1205, in precisely the form in which it is now, would show

4192 the debit for security received and the credit for security withdrawn?

A. I think so.

Q. I call your attention to the testimony on page 1593, where you testified as follows:

"Q. Without an examination of the entries on the bank sheets, did the bank sheets help you at all in coming to that conclusion?

A. Only in so far as they reinforced the conclusion I had come to.

Q. And the form of the bank sheets, irrespective of any entries made on the bank sheets, reinforced you in the conclusion; is that what you mean to testify to?

4193 A. No; I think I could only consider the bank sheets in connection with the entries that were to be made upon them."

Is that testimony true?

Mr. Cohen: Will you read the next question and answer, please. I think if the next two questions and answers would make clearer the witness's testimony at that point they should be called to his attention and to the attention of the Court.

4194 Master: I think Mr. Cohen's objection is well taken; the witness should have all of his testimony on that point called to his attention.

Mr. Wolf: Then, at Mr. Cohen's suggestion, I will ask the witness to read all of pages 1593 and 1594, and I ask you if that testimony is true?

A. Yes, sir. It refers, however, to the 100 per cent. of overdue accounts, as to whether Dockendorff was justified in advancing 100 per cent.

Q. Was this answer given by you at page 1593 4195
limited to that, or was it a general application:

"A. I think I could only consider the bank sheets in connection with the entries to be made upon them.

Q. The bank sheets as a form would show nothing?

A. They would show something, yes.

Q. Did they show anything that helped you in making up this report?

A. Yes, they assisted in that respect.

Q. As a matter of fact, in making up this report, did you refer to the entries on the 4196
bank sheets?

A. Only in so far as finding out the nature of the entries.

Q. The form of the entries?

A. What they purported to represent."

Is that true generally, or was it only true with respect to that one specific point about which you were being examined?

A. The testimony I gave related only to whether Dockendorff was justified or warranted in advancing 100 per cent. of the overdue accounts, but I think the question of what the bank sheets showed as a form of bank sheet, I think I cov- 4197
ered that matter in testifying that I saw the bank sheets with the entries on them, and it was pretty hard for me to disassociate the two, but I could arrive at the same conclusion by an examination of the blank bank sheets.

Q. Referring to a so-called security account, what do you see on this bank sheet, disassociating those bank sheets from any entry that was or would be made upon them, that would enable you to determine that the security received was entered as a debit and the security withdrawn as a credit?

4198 A. The "collateral in full" is practically a debit column, and the "full amount of collections" is practically a credit column.

Q. Well, in order to render this bank sheet a security account, as you had testified to, it would be necessary for the entries on the bank sheets to be properly made under the respective columns, would it not?

A. Yes, sir.

Q. Now, in order to complete the bank sheets as a loan account, what would be necessary?

A. For the entries under the two columns of the loan account to be properly made.

4199 Q. And you assumed that those entries were properly made?

A. Why, I stated that I verified the fact by taking specific instances and following them up and seeing how they were made.

Q. Did you not assume that the entries were properly made, or did you only come to that assumption after an examination of the specific entries?

A. That is pretty difficult to answer. The fact that the sheet was intended to provide for these transactions would indicate to my mind that the transactions were made upon that sheet and I

4200 would get that idea from seeing the blank sheet alone; of course, the idea would be reinforced by actually seeing specific entries made and how they were treated on the sheets and if there was anything inconsistent with the actual entries that I had gotten from the bank sheets of course to that extent I presume the idea would have to be modified.

Q. Did you examine any specific entries where securities were withdrawn and entries made on the bank sheets?

Mr. Cohen: Objected to on the ground

that it assumes that securities were with- 4201
drawn.

Objection sustained.

Q. In answering Mr. Cohen's question on page 1635, as follows:

"Q. Now, when security is withdrawn from a security account, what are the ordinary entries that would be made in a book of account by an accountant?

A. Assuming that the security received was entered as a debit, the security withdrawn would be entered as a credit."

Did you see in any of the books, records or docu- 4202
ments of Mr. Dockendorff any such entries?

A. No, except insofar as the security that was withdrawn from the banks was entered in the bank sheets.

Q. Do you mean by the word withdrawn that the accounts withdrawn became the property of Dockendorff as between Dockendorff and the banks?

Mr. Cohen: Objected to as irrelevant, incompetent and immaterial, the relations between Dockendorff and the banks is not a proper inquiry here.

Objection sustained. 4203

Q. What do you mean by the word withdrawn as you have just used it?

A. That those accounts that were withdrawn from a certain bank were withdrawn from the collateral held by that bank upon which the amount of the loan was based.

Q. And what became of it when it was withdrawn?

Mr. Cohen: Objected to as immaterial, irrelevant and incompetent and further upon

4204 a collateral issue, counsel is bound by the answers of the witness.

Master: I think he can testify what the bank sheets showed.

Q. What do the bank sheets show became of the account so withdrawn?

A. The bank sheets only show that the account was withdrawn. I might say that the withdrawal of an account from the collateral held in a bank in the sense that I have used it includes those accounts which were paid, an account being withdrawn either because of the payment of the account
4205 or withdrawn on account of its becoming overdue, or because of merchandise returned.

Q. Mr. Stern, you testified at page 1637:

"Q. Do you, as an expert accountant, know of any way in which a loan account as distinguished from a security account, could be affected by the addition on any particular day of new collateral?

A. No, sir."

Now, assuming that old collateral charged back was deducted from new collateral received from day to day, under this method of doing business would the loan account be decreased?
4206

Mr. Cohen: Objected to upon the ground that the question is confusing, it is ambiguous; it assumes that the collateral account and the loan account are one and the same thing.

Objection sustained.

Q. I call your attention to the question and answer at page 1637:

"Q. Do you, as an expert accountant, know of any way in which a loan account as

distinguished from a security account could 4207
be affected by the addition on any particular
day of new collateral?

A. No, sir."

Assuming, Mr. Stern, that the overdues were deducted from the new collateral received from day to day, what entry would be made in the security and the loan accounts?

Mr. Cohen: Objected to upon the ground that it assumes that overdues were deducted from new collateral and there is no evidence in the case to support any such assumption; it assumes that there is testimony in the case 4208
justifying such a hypothesis.

Objection overruled.

Question read.

A. There would be no entries made in the loan account and the security account, the account might be expressed either by debiting the security account only with the excess of new collateral over the overdues charged back, or it might be expressed by debiting the security account with the new accounts received and crediting the security account with the overdues charged back.

Q. Whichever method would be adopted would be correct from an accounting standpoint? 4209

A. Yes, sir.

Q. You testified on page 1639 as follows:

"Q. What, if anything, did you find in that exhibit, the account current, that indicated to you as an expert accountant, any new security turned over by the Schwab-Kepner Company to Dockendorff in payment of or in liquidation of any old security?

A. Nothing."

Did you find in the account current anything to the contrary?

4210 A. No, sir. I would like to change that answer by saying this, that the account current representing as it does the advances made, that the credits entered upon the account current would represent any liquidation or part liquidation of the loan and that there were no entries indicating that accounts were taken over in liquidation of the loan because the only entries that appeared upon the account current were the cash remittances received.

Q. That isn't exactly what I asked you. I asked you this; did you find anything in the account current that indicated to you as an expert accountant, that new security turned over by the Schwab-Kep-
4211 ner Company to Dockendorff was not in payment of or in liquidation of, old security?

A. No, sir. I would amplify that answer by saying no, except in so far as the account current is compiled from the remittance sheets, and the remittance sheets show the contrary.

Q. But the account current standing alone doesn't, does it?

A. No, sir.

Q. Did you find anything in the collateral sheets that indicated to you as an expert accountant that new collateral had been turned over by the Schwab-Kepner Company to Dockendorff, not in payment
4212 or in liquidation of overdue accounts or in substitution of overdue accounts?

A. I think the absence of notation to the effect that those accounts were turned over or were substituted.

Q. Did you find anything there that appeared affirmatively that it was or was not a substitution of overdue accounts?

Mr. Cohen: Objected to upon the ground that the witness found no entries indicating such things and therefore he could not have

found any entries indicating affirmatively the opposite. 4213

Objection overruled.

A. I found no affirmative entries to indicate that.

Q. And the same thing is true of the remittance sheets?

A. Will you frame the entire question, Mr. Wolf, so that I have it fully in my mind?

Q. Did you find anything in the remittance sheets that indicated to your mind, as an accountant, that new collateral at any time had been turned over by the Schwab-Kepner Company to Dockendorff not in payment or in liquidation of overdue accounts or in substitution of overdue accounts? 4214

A. The only indication upon the remittance sheets was that the overdue accounts were remitted to Dockendorff and insofar as that was so the remittance sheets indicated to me that the overdues still remained the collateral of Dockendorff and were not substituted by new collateral; outside of that there was nothing.

Q. Mr. Stern, after hearing Mr. Cohen's impassioned speech, have you any changes to make in any answers that you have given to me?

Mr. Cohen: I ask that the witness be permitted to hear his testimony read for the last six or seven questions back. 4215

Testimony read.

A. I don't think so.

Mr. Cohen: I ask that it be stated that the questions and answers were read to the witness and the witness did amplify his answer to one of the questions and his further answer was inserted into the record and that the last answer was made after that

4216 correction had been made, otherwise the record would now disclose that a correction had been made.

Master: We will let your statement stand upon the record uncontradicted.

Q. Did you have in mind that the contract required that all accounts should be assigned to Dockendorff which included XC and all other accounts?

A. Yes, sir.

Q. Now, if the accounts had been assigned to Dockendorff, in your opinion as an accountant was it proper for the Schwab-Kepner Company to remit
4217 to Dockendorff the proceeds of the assigned accounts irrespective of whether or not Dockendorff had a lien on the accounts assigned to him or not?

Mr. Cohen: Objected to as involving a legal theory and not an accounting theory.

Objection sustained.

Q. Mr. Stern, you testified at page 1640 in answer to Mr. Cohen's question that "unless Mr. Dockendorff at that time still retained his possession of this overdue collateral, I don't see why the Schwab-Kepner Company should remit to him for that overdue collateral when the remittances were
4218 received;" if Dockendorff held the assignment of the overdues did you consider in making that answer that the Schwab-Kepner Company should remit to Dockendorff the amount received on the overdues?

A. Yes, sir.

Q. And would your answer have been the same if it was held that Dockendorff hasn't a lien on the outstanding accounts thus collected and remitted?

Mr. Cohen: I ask that the witness be allowed to read the testimony at page 1640 so as to show the connection in which the question and answer were made.

A. I think that would be covered by the contract, Mr. Wolf, it is a legal matter upon which I do not care to testify. 4219

Recess Taken.

After Recess.

ALFERD J. STERN, examination continued.

By Mr. Wolf.

Q. You testified this morning respecting the account current which I understand is in evidence marked Exhibit P9, do you understand that Dockendorff kept such an account in his books? 4220

A. Not an account like that but a number of accounts which in the aggregate showed the same thing.

Q. Did he keep an account which you as an accountant would call an account current?

A. No one account, no.

Q. What would you call the account current, or the several sheets or records, describe the records, do you mean that they are contained in the bank sheets?

A. Some of them are.

Q. Are there any others?

A. On the ledger account which I referred to this morning. 4221

Q. Do you mean the ledger account between Dockendorff and the Schwab-Kepner Company in Dockendorff's books?

A. I mean the ledger account which I referred to this morning as representing the excess loan of Dockendorff to the Schwab-Kepner Company, yes.

Q. What is the designation of that account, the ledger account?

A. I think it just says Schwab-Kepner Company.

Q. What is on the outside of the book?

4222 A. I don't recall that there was any notation.

Q. What would you call such an account, by what name?

A. I would refer to it as an excess loan account.

Q. Is it a ledger account?

A. Yes.

Q. Well, this excess loan account and the bank sheets make up the account current, you say?

A. Yes, sir.

Q. Did you ever see Dockendorff's testimony on page 269 where he testified as follows:

4223 "Q. Mr. Dockendorff, do you keep any ledger account with your customers, say with the Schwab-Kepner Company?

A. I do not."

Did you ever see that testimony?

A. Yes, sir, I saw the entire testimony. If you are reading from his testimony I saw it.

Q. Did you find that Dockendorff kept any cash book which showed his transactions with the Schwab-Kepner Company, or any journal?

A. No, sir.

Q. From what was the so-called account current in evidence prepared?

4224 Mr. Cohen: Objected to on the ground that the witness cannot testify as to what was prepared, he didn't prepare it.

Question withdrawn.

Q. From what records and documents that you saw in Dockendorff's office, would you as an expert accountant say that Exhibit P9 which is the so-called account current in evidence was prepared?

A. I would say that it was prepared from the charge slips showing the amount of money advanced at various times and charges for interest and accountants' salaries and also from the remittance sheets.

Q. What charge slips do you refer to, the pink 4225
slips?

A. No.

Q. What charge slips?

A. Charge slips for interest and commission, for accountants' salaries, and I don't know whether there was a charge slip for cash advanced or whether that came from the stub of the check book.

Q. And those represent all of the charges?

A. Those represent the debits on the account.

Q. And the credits were taken from the remittance sheets?

A. That is my understanding of it. 4226

Q. Mr. Stern, you have testified that if you were to strike out of consideration in your mind everything save the exhibits and everything not in the testimony that the only portion of your report that you would excise would be the statement that you have examined the method of treating the accounts by Dockendorff, on page 3 of your report, is that correct?

Question withdrawn.

Q. If you were to strike out of consideration everything except what you might see in the exhibits in evidence and the testimony, what por- 4227
tion of the report which you have submitted would be eliminated, if any portion would be eliminated?

A. I think the only portion is that portion to which you just referred, namely, that I had examined the records in the office of Dockendorff, etc.

Q. Would you leave out your statement that you had examined the method of treating such accounts by J. E. Dockendorff?

Mr. Cohen: I object to that question on

4228 the ground that the expression referred to is only a part of a complete sentence in the report of the witness and does not state fairly the portion referred to.

Objection overruled.

Question read.

A. Yes, sir.

Q. Do you consider that the accounting practices between the parties, that is between Dockendorff and the Schwab-Kepner Company were of assistance in determining the theory that you adopted as is set forth in your report?

4229 A. They were of assistance in so far as they bore upon the contract and elucidated the contract on any points in which the contract was in doubt, although the contract was the governing factor.

Q. So that as the accounting practice varied from the contract you would disregard the accounting practice and follow the contract, is that correct?

Mr. Cohen: Disregard it in what way?

Mr. Wolf: If the witness doesn't understand the question I will explain it to him.

4230 A. If the contract were clear to my mind I think I would have disregarded the accounting practice; if the contract in my mind or any clauses of it were of such a nature that additional light would have to be thrown upon it from the accounting practice in order to thoroughly understand the contract I would then have taken the accounting practice into consideration.

Q. Now, referring for a moment to the overdues, what was the amount of overdues charged back by Dockendorff to the Schwab-Kepner Company on August 1st, 1910?

A. I don't know. 4231

Q. Do you know what it was as shown by the Suffern report?

Mr. Cohen: I object upon the ground that the report speaks for itself.

Overruled.

A. I can state what Suffern's report shows.

Master: The question is, do you know?

A. I know what is stated in the report, yes.

Q. It is approximately $135,000, is it not?

A. That is the figure given in the report, yes.

Q. And of that amount charged back during 4232
that period approximately $74,000 was paid, was it not according to the Suffern report?

A. That is the amount of cash received according to Suffern's report.

Q. Now, according to the specimen day's transactions which appear on pages 5 and 6 of your report, the overdue accounts charged back were deducted from the current collateral; when those accounts were paid by remittances of the debtors to the Schwab-Kepner Company, and in turn by remittances of the Schwab-Kepner Company to Dockendorff, would that indicate to you as an accountant a duplication of payments? 4233

A. Do you mean in so far as Dockendorff was concerned?

Q. In so far as the relations between Dockendorff and the Schwab-Kepner Company were concerned?

A. No, sir.

Q. Why not?

A. Because the charging back of an account represents to my mind merely the withdrawal from the current collateral and the only payment that is made is the payment when the Schwab-Kepner

4234 Company remits the customer's check on that overdue.

Q. Now, when Beckendorff, according to the specimen day's transactions, deducts $1,500 of overdue collateral from the current collateral does it not mean in effect, even on your own theory, that $1,500 of current collateral takes the place of the $1,500 of collateral charged back?

Mr. Cohen: I object, it is ambiguous.

Mr. Wolf: I am calling his attention to the specimen day's transaction.

Objection overruled.

4235 A. I don't think that necessarily follows, Mr. Wolf, for the reason that the deduction for overdue accounts could be made and would be made whether additional collateral was received upon that day or not.

Q. When received, is that the effect of it?

Mr. Cohen: Objected to upon the ground that it involves the legal conclusion of the witness. He has given his theory, whether or not it is justified by the evidence and the exhibits is for the Court to determine.

Objection overruled.

4236 A. It would mean that $1,500 of overdue accounts had been withdrawn from the current collateral and that additional accounts which may have been a smaller or a greater amount had been received. In other words, Mr. Wolf, it is a question of the addition of new collateral to the current collateral and the withdrawal of overdue collateral and as to whether that is a substitution or not I don't think I can pass upon.

Q. I am not asking you to pass upon my theory, I am asking you to take your theory as you have prepared it in your specimen day's transaction.

exactly as you set it up, and I am asking you what 4237
the effect of your theory is?

A. The effect is to withdraw the $1,500.

Q. And what, if anything, replaces it?

Mr. Cohen: Objected to.

Overruled.

A. And then whatever additional collateral is received that day increases the amount of current collateral on hand. In other words, I don't care to commit myself as to whether or not that is replacing it or not. I think that is for the Court and not for the accountant to decide.

Q. Have you expressed any theory concerning 4238
that in your report?

A. I have shown the transactions as affecting the total collateral on hand, adding to the total collateral on hand the amount of collateral received that day and deducting from it the amount of overdues charged back.

Q. Well, have you expressed or do you wish to be understood as expressing in your report any theory concerning the substitution of the $1,500 charged back with $1,500 of the current security when received?

A. I am of the opinion that in the way I have 4239
presented this matter it expresses the idea that there is no substitution.

Q. That is what I understood; now I understand that you don't want to express any theory about it; do you wish to stick to the theory set forth in your report or your answer?

A. I think my report and my testimony agree, the way I have stated what the specimen days' transactions are as I understand them and I have also answered previous questions of yours as to how I would express the transactions in case there was a substitution.

4240 Q. Now, referring to the specimen day's transactions and the theory set forth in your report, Buckendorff charges back, according to the specimen day's transactions $1,500 overdues which is deducted from the current collateral received from time to time?

A. Deducted from the current collateral on hand.

Q. Is it your theory that that deduction does or does not work a repayment of the $1,500 of overdues charged back with $1,500 of current collateral?

A. It is my theory that it does not work such a
4241 repayment for the reason that the overdues could be charged back without the receipt of any additional collateral.

Q. Did you find, as a matter of fact, that subsequent to August 1st, 1910, and almost daily additional collateral was received by Buckendorff?

A. Yes, sir.

Q. Now, in view of those facts what do you say?

A. I think I can say the same thing because the collateral that was received on any one day was in many cases less than the amount of the overdue accounts charged back.

Q. Could that have been made up by subsequent
4242 current collateral received?

A. If that were the understanding between the parties, I suppose it could.

Q. That deficiency could have been made up by additional collateral?

A. Yes, sir.

Q. Did you make any investigation to ascertain whether or not that was the fact, did you examine the collateral received from day to day and the amount charged back to determine whether or not that was so?

A. I did not. It would have been a very difficult

matter to do that in view of the number of fac- 4243
tors entering into the proposition.

Q. Now, supposing on a given date, Dockendorff charged back $4,500 and on that date did not receive $4,500 of current collateral, was any entry made in the excess loan account?

Question withdrawn.

Q. Did you examine the excess loan account?

A. The form of it, yes.

Q. Did you examine the details of the entries in the excess loan account?

A. Some entries, not all of them.

Q. Now, Mr. Stern, referring to the accounting 4244
practices between the parties, how were the bank sheets valuable as indicating the application of the accounting practice between the parties without any entries upon the bank sheets?

Mr. Cohen: Objected to upon the ground that it has already been covered at least three times.

Overruled.

A. They were valuable in that the headings indicated the nature of the entries to be made upon the sheets.

Q. Was it or was it not necessary for you to 4245
make the assumption in connection with the headings that the entries on the bank sheets would be made in accordance with the headings in order for the bank sheets to be of any use at all in determining the accounting practice between the parties?

A. I did make that assumption but I verified it by the examination of specimen entries.

Q. Was it necessary for you to make that assumption in order that the form of bank sheet should be of value to you as indicating the accounting practice between the parties?

4246 A. Yes, sir.

Q. Now, the recapitulation sheets that you have testified about, were they of service to you in determining the accounting practice between the parties?

A. I don't know how to answer that, the recapitulation sheets showed the distribution of the remittances between the collateral deposited with the banks and the collateral that was not deposited with the banks, the collateral deposited with the respective banks and the other collateral; I don't know whether that affected the relations between Dockendorff and the Schwab-Kepner Company or
4247 not.

Mr. Wolf: I move to strike out the answer as not responsive.

Motion allowed.

Question read.

A. If the accounting practice between Dockendorff and the banks is a part of the accounting practice between Dockendorff and the Schwab-Kepner Company, yes; if not, no.

Q. Which way did you treat the relations between Dockendorff and the banks as being the same as between Dockendorff and the Schwab-Kepner
4248 Company or as being different?

A. Insofar as they represented the same transactions as being the same.

Q. Can't you testify now whether or not the recapitulation sheets were of service to you in determining the accounting practice between Dockendorff and the Schwab-Kepner Company?

A. No further than I have already testified, Mr. Wolf, I have tried to make myself clear.

Q. Can't you tell which theory you adopted, whether that the recapitulation sheets showed precisely the same relations between Dockendorff and

the Schwab-Kepner Company as Dockendorff had 4249
with the banks or different?

A. They were the same in some respects, I don't think they were the same in all.

Q. In your theory can you tell me the respects in which they differed?

Mr. Cohen: Objected to as incompetent immaterial and irrelevant.

Objection sustained.

Q. Can you answer yes or no to the question as to whether or not the recapitulation sheets aided you in arriving at your theory as to the accounting practice between Dockendorff and the Schwab- 4250
Kepner Company?

Mr. Cohen: Objected to upon the ground that it has already been answered.

Overruled.

A. I don't think that the recapitulation sheets or any of the records of Dockendorff aided me in arriving at my theory; the theory was arrived at as the result of an examination of the contract and the testimony.

Q. Please don't quibble, Mr. Stern.

A. I am not quibbling, Mr. Wolf.

Q. I asked you whether or not the recapitula- 4251
tion sheets were of any assistance to you in arriving at a result in determining what the accounting practices between the Schwab-Kepner Company and Dockendorff were?

A. I don't know how to answer it any further.

Q. Can you answer it yes or no?

A. No, sir.

Q. At page 1651 you were asked this question and gave this answer:

"Q. Will you please explain why, if the contracts and the exhibits in evidence are

4252 sufficient for you to base your theory of your report as you testified, why you went to the records in Dockendorff's office?

A. For the purpose of finding out whether those records were kept in accordance with my theory of the contract."

Now, in examining the records to see whether they were in support of your theory, did you use the recapitulation sheets?

A. There isn't any question that I examined the recapitulation sheets at that same time; the only difficulty I have is in determining whether or not they had any effect upon the theory which I ar-
4253 rived at; that is the only question in my mind.

Q. Well, I can't tell you whether or not it affected you; you must tell me that; can't you do that?

A. I would have arrived at the same conclusion whether I had examined the recapitulation sheets or not. The recapitulation sheets showed the distribution of the remittances between the collateral that was held by the banks and the collateral not held by the banks.

Mr. Wolf: I move to strike out "The recapitulation sheets showed," etc.

4254 Motion allowed.

Q. Referring to the question of Mr. Cohen and your answer to that question, which I read to you, can you say whether or not you used the recapitulation sheets for the purpose of finding out whether the records of Dockendorff were kept in accordance with your theory of the contract?

A. I did examine those sheets at the time I made this examination for that purpose.

Q. Now, in examining the recapitulation sheets did you examine and make use of the entries on

the recapitulation sheets or merely the form of 4255
the recapitulation sheets; which or both?

A. The same as with the other records, I examined the form and I examined specimen entries.

Q. And assumed that the specimen entries were made in accordance with the forms in the cases that you did not examine?

A. Yes; that the same practices had prevailed as in the specimen transactions which I examined

Q. And that is the same as you testified this morning concerning the bank sheets, you made the same assumption as you did with respect to the bank sheets?

A. Yes; after examining the form and the speci- 4256
men entry, I presumed that all the entries were made in the same manner.

Mr. Wolf: I think at this point it is proper for us to renew the motion that your Honor strike out Mr. Stern's testimony, unless by proper evidence binding upon the Trustee, the form of the entries on the bank sheets and the recapitulation sheets are proven.

Master: The point made by Mr. Cohen, it seems to me, is correct, that the direct examination of the witness, consisting of his 4257
report in evidence, is directed entirely to a criticism of the report of Mr. Suffern and is based upon the contract and the testimony, and that the statement in his report that he had examined the contract between the Schwab-Kepner Company and J. E. Dockendorff and the method of treating such accounts by J. E. Dockendorff has no connection with any of the other parts of the report that are in evidence, and the report on its face shows that it was not based

4258 upon such examination of the accounts. Now, as I said before, when I ruled upon this question, if in examining the entire record it does appear that he relied upon anything not in evidence, to the extent to which his testimony is affected thereby his testimony will be excluded from consideration, but it would appear to me now that his direct examination was based not at all upon anything except things that were in evidence.

Mr. Wolf: That is true, perhaps, with the exception of the statement contained in
4259 Mr. Stern's report. I say that without having examined this report carefully, with the exception of the statement found on page 3 of Mr. Stern's report, wherein he says that he has examined the method of treating such accounts by J. E. Dockendorff, and he testified that that referred to overdue accounts, and his testimony will be found on page 1497 and the following pages.

Master: I think that Mr. Cohen's point on that is well taken, that his direct testimony is not based in any way upon his examination of Dockendorff's treatment of the
4260 accounts.

Mr. Wolf: Let me make that perfectly clear; this witness on his direct testimony says this "I have examined the method of treating the overdue accounts by Dockendorff," now my cross examination is this "You say you have examined that method, now I want you to explain what you mean by that, tell me what you did in examining the method; that is a perfectly fair, proper and legitimate method of cross examination and this witness has testified that in using

the words "examined the method of treating such accounts" he used the following papers and he gives the papers and says "I listened to Dockendorff explain the method he had in use, illustrating by specimen forms" "What specimen forms did he show you" "The bank sheets, charge back slips, remittance slips, ledger cards, collateral sheets—I think that is all." How can it be claimed that I am bound by that cross examination on matter that was directly contained in his report, namely, that he had examined the method of treating those accounts by J. E. Dockendorff. 4261

4262

Master: I was just about to say that I didn't necessarily rule that you were bound by it but Mr. Cohen has called my attention to page 1476 which contains the stipulation upon which Mr. Stern's report was put in evidence, wherein you are entitled to cross examine Mr. Stern without being bound as to any of his theories or deductions.

Mr. Wolf: I also reserved the right to strike out that evidence if the documents upon which it was based were not properly offered and received in evidence.

Master: It appears to me that Mr. Stern's report is not based upon his examination of the method of treating the accounts by Dockendorff; that that statement in his report refers to other matters originally contained in the report and which were excised from the report before it was put in evidence and there is nothing in the evidence to show that in formulating this report which is his direct examination and which consists entirely and exclusively of a criticism of Mr. Suffern's report and which is based upon the contract 4263

4264 and the testimony in evidence, there is nothing in this report to indicate that he relied in any way upon his examination of Dockendorff's methods of keeping his accounts.

Mr. Wolf: I want to call your Honor's attention to the cross examination respecting that portion of the report. I asked Mr. Stern, at page 1197 what he meant by saying in his report that he had examined the method of treating these accounts, what accounts he referred to and he said that he meant to refer by that to the overdue accounts charged back. Then I asked him "In exami-
4265 ning the method of treating these accounts by Dockendorff, what books, records or documents did you examine?" and he answered "I listened to Mr. Dockendorff explain the system he had in use in his office illustrating by specimen forms."

"Q. What specimen forms did he show you?"

"A. The bank sheets, charge back slips, remittance slips, ledger cards, collateral sheets—I think that is all." Now, it is perfectly apparent that for that specific portion of the report he relied upon those papers
4266 and he has since added the recapitulation sheets and it is impossible for me to intelligently cross examine him upon his statement that he has examined the method unless the papers which he used and which are the basis of that report are in evidence and the method is in evidence.

Master: The cross examination that you refer to is directed entirely to this particular statement in the report which, as I have already pointed out, had reference to other matters which were originally contained in

the report and which were excised before the report went into evidence, and it appears to me that that statement has no connection with the other portions of the report. I will, therefore, deny the motion to strike out. 4267

Mr. Wolf: I now move to strike out the statement contained on page 3 of Mr. Stern's report and the testimony based upon that, that he has examined the method of treating the overdue accounts by Dockendorff.

Mr. Cohen: So far as the cross examination of Mr. Stern is concerned, by Mr. Wolf, I do object to it because it is new matter; I have no objection to striking out that portion of the report. 4268

Decision reserved.

Sworn to before me this 31st day of May, 1911,

Adjourned to Wednesday, June 7th, 1911, at 10:30 A. M.

4269

4270 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter of THE SCHWAB-KEPNER COMPANY, Bankrupt.	In Bankruptcy.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, as Special Master, at No.
4271 165 Broadway, New York City, on Friday, June 9th, 1911, at 10.30 A. M.

PRESENT:

JULIUS HENRY COHEN, Attorney for Petitioner. RALPH WOLF, Attorney for Trustee.

ALFRED J. STERN, recalled.

By Mr. Wolf:

Q. On page 1497 you testified that you had examined the method of keeping the overdue accounts by Dockendorff, and that in examining the
4272 method of treating such overdues you examined the bank sheets, the charge back slips, the remittance slips, ledger cards and collateral sheets; in determining the method of treating the overdue accounts did you examine, for example, the blank bank sheets or the bank sheets as illustrated by specimen entries made on the bank sheets?

A. In determining the way to consider the accounts I confined myself to the contract and the testimony, in support of the theory as I determined it the bank sheets merely showed the fact that the current collateral was held by the

banks. The bank sheets which I did examine did have specimen entries on them. 4273

Mr. Wolf: I move to strike out all except the last statement.

Mr. Cohen: If your Honor pleases, the question assumes that the witness determined the method from those papers when his testimony over and over again is that he made his determination from the contract and from the evidence in the case, and then went to the other papers merely for the purpose of seeing whether there was anything to the contrary. It does seem to me that it is only fair to the witness to permit him to state that the question does assume something which is not the fact, which is all that his answer is doing. The first part of his answer is explaining that he does not accept the assumption of counsel who is examining him. 4274

Master: I will strike out the entire answer.

Question read.

Witness: May I call your Honor's attention, before answering the question, to what appears to me to be the vice of the question. Mr. Wolf cites my testimony you examined the method of keeping the overdues by Mr. Dockendorff," and then asks "in determining the method of treating the overdues," which is open to the assumption that in determining my method of handling the specimen day's transactions I used those papers. My only purpose in answering that the determination of treating the specimen day's transaction was 4275

4276 derived from the contract and from the testimony, was to make it clear that that was the basis of the theory not with any intention of quibbling or evading Mr. Wolf's question.

Mr. Wolf: I will amend the question so that the last part reads, "In determining the method of treating the overdue accounts by Mr. Dockendorff, did you, for example examine the blank bank sheets or the bank sheets as illustrated by specimen entries made on the bank sheets?

4277 A. There were specimen entries on the bank sheets that I examined.

Q. And then you assumed that the entries on the bank sheets were made in every instance in accordance with the specimen entries which you saw, did you not?

A. I assumed that that was the practice, yes.

Mr. Wolf: I now make the motion which I made at the end of the last session and which your Honor said I might make at this session, to strike out all of the witness's testimony to the effect that he has examined the method of treating the over-

4278 due accounts by Dockendorff and all of the testimony respecting such treatment of the overdue accounts by Dockendorff, unless the bank sheets and the recapitulation sheets are proven and offered in evidence by counsel for Mr. Dockendorff.

Master: Is that the same motion which you made at the last session?

Mr. Wolf: No, sir, that motion which I made at the last session—Oh, yes, I did not know that it appeared in the record, that is the motion on which your Honor

reserved decision. That motion was to 4279
strike out the statement contained on page 3 of Mr. Stern's report as to having examined the method of Dockendorff and all testimony based upon it, unless the papers referred to are produced.

Mr. Cohen: The record of the last hearing does not contain the analysis which I made for your Honor of Mr. Stern's direct testimony. I then called your attention to the fact, supported by the record, that the whole subject matter of Mr. Stern's examination of Dockendorff's records was brought out by Mr. Wolf on cross examina- 4280
tion and not justified by anything in the direct examination. On page 1198 it appears that Mr. Wolf asked the question, "Q. You have testified that you based your report that you have examined the method of treating such accounts between Dockendorff and the Schwab-Kepner Company on certain books and records and documents, is that not correct?" "A. I don't think I stated that; I said I based a certain opinion upon the way in which the books were kept." "Q. Well, I refer you to page 3 of your report in which you say, 'Upon 4281
our part we have examined the contract between the Schwab-Kepner Company and J. E. Dockendorff, we have examined the method of treating such accounts by J. E. Dockendorff.' Now, I ask you what you did examine in order to determine the method of treating such accounts by J. E. Dockendorff?"

Mr. Cohen: Isn't the balance of that sentence showing the deductions which Mr

4282 Stern made in that report stricken from his report?

Mr. Wolf: It is.

Mr. Cohen: Then I object to the question upon the ground that it is irrelevant and immaterial. It is a mere statement of fact, the opinion based thereon and the conclusion of the witness as appearing on pages 3 and 4 having been expunged at the request of Mr. Wolf.

Objection overruled.

4283 I again call your Honor's attention to the fact that Mr. Stern's testimony as appearing from the report which is in evidence and which I have handed to your Honor, expunges the only opinion which he expressed. Notwithstanding the fact that I called Mr. Wolf's attention to that fact on the record at page 1499 and over my objection, he nevertheless proceeded to examine the witness and brought out the fact that the reference there is as to the overdue accounts, appearing at pages 1500 and 1501 and 1502. On page 1501 the record is as follows:

4284 "A. As I understand your question it is confined now to the consideration of the question of overdues?"

So that the record is in this shape, having deliberately excised from the proposed report of the accountant the opinion which the accountant based upon the examination of the testimony, the contracts and the Suffern report with reference to the overdue accounts, the accountant then making a criticism as appears from the proposed report as to the deductions by Suffern & Son from the documents of Deckendorff, which he had and

then saying, "For our own part we have 4285
examined the records of Dockendorff" and upon that he bases not merely a criticism of the Suffern report, but an affirmative deduction of his own. Now, that affirmative deduction was stricken out before the report was offered in evidence. The report having gone in evidence there were no questions asked of Mr. Stern on direct examination. On cross examination, counsel, evidently believing that the entire report was based not merely upon the contract and the testimony and the exhibits in the case, but that it was based also upon an examination of Docken- 4286
dorff's records, endeavored in various ways to make it appear that the witness had gone to Dockendorff's office for the purpose of formulating his entire theory as to the manner of doing this business. He went on for a considerable length of time on that line, the witness having testified definitely to the papers which he did examine, which were in evidence, and then when he reached this half sentence in the report he was warned by counsel for the petitioner that the theory upon which that was in the report was excised by him and that therefore there was 4287
nothing but the statement of fact in the report. Nevertheless he proceeded to examine as to what he found in the records, entirely extraneous matter, which was not referred to in the testimony of Mr. Stern, and I call your Honor's attention to Mr. Stern's testimony where he makes it clear that the only other thing that remains in his report was an elucidation of the theory and that was based entirely upon the contract and the testimony which he read. So, we have this

4288 situation, in endeavoring to show that the witness made up his mind on things not in evidence, counsel has examined the witness at great length concerning things not in evidence and having been unsuccessful in establishing that the report or any part of the report in evidence was based upon this outside examination, your Honor having ruled that that was not the fact, having gambled with the situation in the effort to show that it was based upon outside facts, and having become dissatisfied with the result, counsel now moves to strike out all of his own ex-

4289 amination. This is the first time I have ever heard a motion to strike out one's own examination; it is not ours, it is counsel's own examination. It seems to me it being matter not brought out on direct examination, he having examined into it as your Honor already ruled, it was not a direct examination at all, it was an examination at his own risk. At all events if he is right and it has no bearing or if it does have a bearing, as your Honor determined before, it is for the Court to determine in what respects it weakens this report and not for your Honor. It

4290 seems to me that a motion to strike out three or four days' examination would be utterly unfair and would not present the true situation to the Court above, especially in view of the fact that I called attention at page 1499 to the fact that that sentence was a mere statement of fact, the opinion based thereon and the conclusion of the witness having been expunged at the request of Mr. Wolf.

Mr. Wolf: If your Honor pleases, I have listened with a great deal of attention to

Mr. Cohen's argument, which I think is 4291
utterly useless. It seems that Mr. Cohen, with his usual adroitness, has endeavored to cloud the situation. The situation is just this Mr. Stern's report was offered as Mr. Stern's direct examination, and it contains at page 3 this very significant statement, "We have examined the method of treating the overdue accounts by Dockendorff." Now, after that Mr. Stern voiced a certain opinion, I read from the excised report, "And in our opinion the testimony in this proceeding indicates, etc." Of course I didn't want that to go in as Mr. Stern's direct testimony, 4292
because as I understood it, if Mr. Stern were asked that question on his direct testimony, he would not have been allowed to answer it, it would have been a mere conclusion. Therefore his direct testimony went in in this shape, "I have examined the method of treating the overdue accounts by Dockendorff." Then subsequently, Mr. Stern gave voice to certain opinions which, as I understand it, lead up to the conclusion that these overdue accounts remained the property of Mr. Dockendorff. That is his opinion running through all of the report.

4293

Master: He expressed those opinions on your cross examination.

Mr. Wolf: No, he did not. Mr. Cohen has carefully shadowed that proposition. He cannot call your Honor's attention to one opinion that I asked Mr. Stern to voice, Mr Cohen has neatly hurdled that difficulty. I did ask him on what records that statement was based, I said, "On what records do you base your statement that you have examined the method of treating the overdue accounts

4294 by Dockendorff," and Mr. Cohen objected to it, because the rest of the sentence was excised. I didn't ask Mr. Stern to express one single opinion and Mr. Cohen has concealed that fact from you. Now, I say if that statement went in the report that he had examined the method of treating the overdue accounts, it must have been for a purpose. That statement was put in there for a purpose and your Honor can appreciate what that purpose is, to give you the idea that Mr. Stern's theory is that the overdue accounts were the property of Mr. Dockendorff.

4295 I did not ask Mr. Stern for his opinion in that respect and Mr. Cohen cannot point out a single line of cross examination where I did, but when we got to redirect, Mr. Cohen took that up and asked him whether in his opinion they were the property of Dockendorff and he answered that in the affirmative. The situation is just this, we have Mr. Stern certifying in his report that he has examined the method of treating the overdue accounts from which the inference is immediately drawn that he found it entirely consistent with Mr. Dockendorff's re-

4296 tention of the ownership of the overdue accounts, without my being able to judge of it and without your being assisted by cross examination showing the weaknesses of that theory, because the documents on which that statement is based are not in evidence. Now it seems to me fair to call Mr. Cohen's attention to that fact, so that this lacking proof which is in his possession may be supplied and I have therefore made this motion in the interests of fairness to Mr. Dockendorff so that he, having the information in his pos-

session can supply it and if he doesn't I 4297
want the inference to be drawn from that that the information would be harmful to him, because if it were favorable, it is a fair presumption that it would be offered in support of the statement based on it.

Mr. Cohen: We are quite willing to rest Mr. Stern's testimony as it appears. He gave testimony on redirect examination which indicates precisely the extent to which his direct testimony rests upon the things in evidence and precisely the extent to which it rests upon the things not in evidence. If any court looking at this record 4298
in the light of Mr. Wolf's cross and recross examination finds anything in Mr. Stern's examination to destroy any part of his direct examination he is entitled to have it. We do not believe that he has destroyed any particle of it whatever; all that Mr. Stern attempted to do was to criticise the conclusions of Messrs. Suffern & Son as based upon what Suffern & Son were supposed to examine; he has given us the benefit of an accountant's point of view. As to the overdues, the question of whether or not Suffern & Son were entitled to consider those over- 4299
dues as the property of Schwab-Kepner Company remains as it always was, a question of law to be determined by facts. When the Court determines that theory it will need the assistance of an accountant to see how that theory is worked out. Mr. Stern performed that service by elucidating what he believes to be an illustration of the manner in which it was worked out and that is all he did. It is true that he examined the practice in Dockendorff's office and it is true that if Mr. Wolf had left in the opinion

4300 based upon the examination in Dockendorff's office that opinion would have to be stricken out unless the basis of it were put in evidence; but that is not what took place, the opinion was stricken out before it was put in evidence and then it became necessary, having been gone into at length, the opinion of this witness having been brought out by Mr. Wolf at the top of pages 1499 and 1500, it became necessary for us to show that the witness based his opinion not only upon the records in Dockendorff's office but also upon the testimony in the case. I also call your

4301 Honor's attention to the fact that there is evidence by Dockendorff himself as to the manner in which he dealt with the banks and the manner in which he kept the bank sheets and the ledger cards. I have recently read that over and there is sufficient evidence in the records, regardless of any outside investigation of the records to show the manner in which he kept the records in his office. I don't see how your Honor could possibly determine this motion to strike out in due justice without a minute examination of all of the evidence in the case to see

4302 in how far you would strike out testimony, how much of it would you strike out, what pages, what questions and answers you would strike out, whose examination, your Honor cannot make any general order here.

Mr. Wolf: I want to call your Honor's attention to page 1663, brought out by Mr. Cohen.

Master: For the reasons indicated by my several rulings on pages 1716 and 1722 of the record, I will deny the motion to strike out the testimony.

Mr. Wolf: In order that I may have the ruling on the record perfectly clear—do I understand you to hold that the reason that you deny the motion is because the bank sheets and recapitulation sheets were not the basis of the statement contained on page 3 of the accountant's report? 4303

Mr. Cohen: I object upon the ground that it is incompetent to cross examine the Master on his ruling.

Master: I think it perfectly clear in my previous ruling contained at page 1720. I think I indicated just exactly what I have in mind this morning as the reason for my ruling. I consider that the statement on page 3 as I have said repeatedly has no reference to the report and there is no reason why your cross examination and the redirect based upon your cross examination on that point should be stricken from the evidence, the report constituting Mr. Stern's direct examination in the case. 4304

Mr. Wolf: As I understand it what is in your mind is and the basis of the ruling is that the statement contained on page 3 is Mr. Stern's direct examination?

Mr. Cohen: I object to the Master being cross examined. 4305

Master: You may call my attention to your views, Mr. Wolf.

Mr. Wolf: The report was put in evidence and I then cross examined Mr. Stern concerning that statement and obtained the basis of it, that is the books and records of Dockendorff. In other words he said as appears by the record, that he based that statement, among other things, on the bank sheets. Now, there isn't a question on cross exami-

4306 nation where I asked Mr. Stern what his opinion was, I confined myself in my cross examination to one point regarding that sentence in the report and that was as to upon what records that statement was based. Mr. Stern has repeatedly testified that it was based upon the bank sheets and we now find that the bank sheets were specimen bank sheets with the entries on them. Mr. Stern may have made other answers as to a theory which he formulated but not in answer to any question I asked him. Now, Mr. Cohen takes the witness on redirect and lugs in the
4307 opinion excised from the report and which I haven't touched upon in the cross examination except by this statement and it is therefore in the record with the same force and effect as if it were Mr. Stern's original and direct testimony and I can point out to you instance after instance in the redirect testimony of Mr. Stern where that was gone into as a new proposition by Mr. Cohen on his redirect examination of Mr. Stern, but I will not take the time to that now unless you desire it.

4308 Master: As I pointed out once before, if it appears upon an examination of the entire testimony that Mr. Stern's opinion is based upon facts that are not in evidence or on records not in evidence his opinion may be void or invalidated and you can call attention to that in your brief.

By Mr. Wolf:

Q. You testified on page 1655 that if the report was to be submitted for the purpose of being put in evidence would you examine all books, documents, testimony and everything admitted in evi

dence, together with everything that in the opinion 4309
of counsel admissible in evidence for the purpose of determining as far as possible what the actual facts were.

Mr. Cohen: By report do you mean the report of Messrs. Suffern & Son?

Mr. Wolf: Yes.

Q. (continued): Did you have in mind in making that answer any specific books, documents and testimony that you considered available and which contained evidence for the purpose of determining what the actual facts were, and if so, name them.

A. I did. I considered the accounts of the 4310
Schwab-Kepner Company with its customers as perhaps furnishing a basis for determining whether these accounts were assigned to Dockendorff and whether at any time Dockendorff released his lien upon those accounts; I considered the account of the Schwab-Kepner Company as shown by its books as perhaps furnishing the basis of an opinion as to whether the loan was one loan or whether each separate advance constituted a separate loan; I considered the testimony of Mr. Williams given as to the cancellation of $120,000 as perhaps being capable of verification in detail from records of the Schwab-Kepner Company; I considered the evidence
given by Mr. Williams in reference to the D. O. 4311
Tatum and Ferguson-McKinney transactions as being capable of proof from the Schwab-Kepner Company records and being taken into consideration in the statement submitted by Suffern & Son.

Mr. Wolf: I move to strike out the answer except insofar as it names the records

Master: The only thing required by the question is the naming of the documents. Then entire answer will be stricken out.

4312 A. The accounts of the Schwab-Kepner Company with its customers, the account of the Schwab-Kepner Company with J. E. Dockendorff in the Schwab-Kepner Company books, the testimony of Mr. Williams to the effect that there had been $120,000 worth of cancellations in the early part of November and whatever records the Schwab-Kepner Company had bearing upon this transaction, the testimony of Mr Williams in reference to the D. O. Tatum, Ferguson-McKinney and Winn Ferguson transactions together with whatever records the Schwab-Kepner Company may have had bearing upon those transactions, and last and foremost the contract.

4313 Q. In what book of account, in ordinary accounting practice, would the accounts of the Schwab-Kepner Company with its customers appear, where would they have been kept?

A. In the sales ledger of the Schwab-Kepner Company.

Q. And in what books of accounts in ordinary accounting practice would the account of the Schwab-Kepner Company with J. E. Dockendorff have been kept?

A. In the general ledger of the Schwab-Kepner Company.

Q. Were you present at any hearing in this
4314 matter when those specific books were offered in evidence by counsel for the Trustee and excluded over the objection of the attorney for Mr. Dockendorff?

Mr. Cohen: Objected to as incompetent, immaterial and irrelevant and not proper recross examination.

Objection sustained.

Q. You testified at pages 1657 and 1658 with reference to the system of ledger cards in Dockendorff's office and you were asked by Mr Cohen, "what would be the ordinary and usual

entries to be found on such cards if, when an overdue account was charged against the loan account of the Schwab-Kepner Company it ceased to be treated as the collateral of Dockendorff and became the collateral of the Schwab-Kepner Company," and your answer was that, "The entry would be a credit upon the account of such overdue account which after being made would show the balance to have been liquidated and no balance remaining open." Is that intelligible to you now? 4315

A. I understand the answer, the only thing is that the question reads as if an overdue was charged against the loan account, whereas it was withdrawn from the current collateral account. 4316

Q. Your answer now is what, will you explain that so that your answer on the record may be clear?

A. If I may be permitted to propound the question and answer it at the same time, if the overdues which were charged back ceased to be collateral held by Dockendorff, the ordinary course of accounting would be to take those accounts completely out of Dockendorff's records by crediting the account at the time the overdue was charged back, and thereby leaving no balance on the account.

Q. Now, in making those answers which have just preceded in respect to the overdues did you have in mind the provision of the contract that all of the accounts receivable whether approved or not by Dockendorff were to be assigned to Dockendorff? 4317

A. Yes.

Q. You testified at page 1659 referring to the expression of 100% increase in the loan for overdues collected, that the loan upon the collections of the overdues would be reduced by the amount

4318 of the remittance and an advance would be warranted of 100% of such remittance; did you find any such entries in Dockendorff's books?

A. I cannot answer that yes or no, although I can explain.

Q. Did you find any account in Dockendorff's books which indicated that when an overdue remittance was collected that Dockendorff reduced the loan by the amount of the remittance and that he then advanced 100% of the remittance?

A. I did find entries showing that the amount received by Dockendorff reduced the amount of the loan, and I also did find entries showing the
4319 amount advanced by Dockendorff each day, but the computation by which that amount was arrived at does not show in Dockendorff's books and can only be shown in the general theory outlined because of the necessary factors entering into the computation.

Mr. Wolf: I move to strike out the answer after the words "does not show in Dockendorff's books."

Mr. Cohen: I ask that the answer be allowed to remain. This witness being an expert accountant his answers are not com-
4320 plete without the explanation, and further, upon the ground that it requires unnecessary redirect examination to secure the explanation.

Master: I will strike out the last part of the answer to the effect that it could only be shown, etc.

Q. In what account did the reduction of the loan by 100% of the amount of the remittance appear?

A. That is included in the amount that was advanced, and is also shown in the loan account.

Q. Can you determine whether or not Mr. Dockendorff actually did advance to the Schwab-Kepner Company 100% of the amount received upon overdues? 4321

A. No, I could not, there are too many factors entering into the amount of the loan on any one day.

Q. Can you tell now what the percentage was that Dockendorff did advance as against the overdue collections?

A. My impresion is that it was 100% and that the amount advanced was even greater than that amount, but upon any specific day it would be very difficult to determine it because the amount of the advance is just one amount into which or in the computation of which a number of factors enter, and the 100% received on overdue accounts is only one of those factors. 4322

Mr. Wolf: I move to strike out the answer—the last portion.

Mr. Cohen: I object.

Motion denied.

Q. Upon the papers in evidence will you please demonstrate for the month of August, 1910, the percentage of advances made against the overdue remittances received during that month?

A. That would be impossible because the advances, as I take it, were made against the entire collateral still on hand, and when I say 100% additional advance, I do not mean to say that it was made against those collections. We have here the situation of a certain amount of collateral and a certain amount of money borrowed upon that collateral. According to the fluctuations in the collateral either because of additional collateral received or liquidated or because of collateral withdrawn from those accounts on which the amount of the loan is based, 4323

4324 there is a variation of the collateral account and according to the amount of money advanced and the amount of money received by Dockendorff there is a variation in the loan account; whatever variation there is in the collateral and the loan accounts, the difference between those two variations would be the amount which the Schwarz Kepner Company, under its contract, is entitled to receive that day. It is impossible to segregate and say that the advance was a certain amount of the overdues and a certain amount of the current collateral received that day because of the fact, as I take it, the entire transaction con-
4325 siders the proposition as being one total mass of collateral and one total loan.

Mr. Wolf: I move to strike out the answer after the words, "That would be impossible."

Motion denied.

Q. Now, take the entire period from August 1st, 1910, down to the time of the receivership, can you demonstrate what the percentage of loan was against the overdue remittances received by Dockendorff?

A. No, sir, the same answer would hold.

4326 Q. Mr. Stern, I call your attention to pages 1670 and 1671 and 1672 of the record. You were asked this question at page 1670.

"Q. You have testified, Mr. Stern, at pages 1511 and 1512 and 1511, you referred to the actual charging back of the accounts and also to the payment of the accounts, what did you mean by that?

A. I meant to bring out the distinction between the charging back of an account as entered upon the charge back sheets at

the time it became overdue or shortly 4327
thereafterwards, and between the actual
payment of the account by the customer at
some time subsequent thereto."

and then the question on page 1672—

"Q. Did you distinguish, in answering the questions between the liquidation of the account by the customer's check after the overdue period and the act of Dockendorff in withdrawing the account from what you called current collateral?

A. I tried to do so."

Mr. Cohen: Do you exclude all the other 4328
questions and answers?

Q. (continued): and I will now let you read the other pages. Now, I call your attention to the question and answer at page 1512—

"Q. Can you, or could you, by an examination of the account current pick out any item in that account current, either debit or credit, which represents in whole or in part the actual charging back of and overdue or the actual payment of an overdue charged back and I ask you to answer that question, yes or no?

A. I don't think I can give you a yes 4329
or no answer to that because your question is two questions."

Then on page 1513—

"Q. Let us take the first item in this account current, or take any item in August, August 17th, 1910, a debit of $2,500. Can you say from an examination of this account current whether or not that represents in whole or in part a charge back?

4330 A. The item in itself—I can't say that the item in itself represents in whole or in part a charge back, but the amount of that item may have been determined as a result of the amount of the charge backs paid on that date."

Then at page 1514, at the bottom, and page 1515—

"Q. Isn't it a fact that taking the account current alone, without reference to any other document that you cannot determine any item in this account current
4331 that refers to or contains in whole or in part a charge back item?

A. I would like to answer that question categorically if you would limit your question to the charging back of the charge back item.

Q. Well, the charging back of the charge back item.

A. No.

Q. Can you or can you not tell—I want the record clear—from the account current whether any item either debit or credit contains a charging of a charge back item
4332 in whole or in part?

A. I can tell that it does not."

Now, is there anything in those questions and answers which you desire to change?

A. I would say this, Mr. Wolf. The account current shows total figures. The debits upon that account current represent the cash advanced by Dockendorff and the amount of the advance was, under the system in use determined in part from the overdues that were paid upon that day. The account current upon its credit side represents the total remittances re-

ceived that day which are shown in detail upon 4333
the remittance sheets and the remittance sheets show that some of the items included in that total were overdue. The actual charging back of an overdue account does not appear in the account current; the amount paid in overdues charged back is included in the total remittances on that day as they appear on the account current and were a factor in determining the amount of the advance upon that day as shown upon the debit of the account current.

Q. Assuming that the remittances were in fact remittances on overdue accounts, was the portion of the remittances which were overdue accounts dis- 4334
tinguished in the account current?

A. Not as a separate item, only the total amount of remittances for that day.

Q. In other words, if, on a certain day the remittances from Schwab-Kepner Company to Dockendorff were $5,000, could you determine from the account current what proportion, if any, of that $5,000 was by reason of overdue remittances?

A. If I confine myself to the account current alone I could not, but the account current must be taken in conection with the records from which it was compiled.

Q. I am simply referring to the account current 4335
alone.

A. I just wanted to make the record clear, Mr. Wolf.

Q. As I understand your testimony now, Mr. Stern, the specimen day's transactions appearing at pages 5 and 6 of your report are based entirely upon the contract and the testimony, is that correct?

A. Yes, sir.

Q. Now, is that your opinion in the specimen day's transactions appearing at pages 5 and 6 of your report, based entirely upon the contract and

4336 the testimony as you say, reinforced by anything else?

A. Yes, sir.

Q. Did you base it upon anything else?

A. No, sir.

Q. You are willing to let the specimen days transactions rest merely upon the testimony and the contract?

A. Yes, sir, and I so stated in the report.

Q. Mr. Stern, on the exhibits that are in evidence and the records that are in evidence, as an expert accountant, how long would you say it would require for Mr. Dockendorff to determine on any
4337 given day what advance the Schwab-Kepner Company would be entitled to under the contract?

A. Does that relate to a particular day?

Mr. Cohen: I object to that upon the ground that Mr. Dockendorff did not have the testimony and the exhibits in evidence on any particular day as the basis for making up that amount.

Mr. Wolf: Excluding the testimony?

Mr. Cohen. I object to that, upon the ground that the documents in evidence includes the report of Suffern & Son and also the recapitulation based upon the collateral
4338 and the remittance sheets.

Mr. Wolf: Excluding any exhibit which was not in Mr. Dockendorff's possession at the time.

Mr. Cohen: I object to that upon the ground that it is too general and too vague.

Objection overruled.

Question reframed.

Q. Upon the exhibits in evidence which were in Mr. Dockendorff's possession at the time, as an expert accountant, how long would you say it would

require for Mr. Dockendorff to determine on any given day what advance the Schwab-Kepner Company would be entitled to under the contract? 4339

Mr. Cohen: Objected to upon the ground that it appears from Mr. Dockendorff's testimony that he referred to his sheets showing the collateral as it stood at the various banks and based his approximate estimates upon that from day to day.

Objection overruled.

Question read.

A. From the remittance sheets and the collateral sheets and the overdue charge back slips, the computation could be made in very short order as to what increased loan value there was to the collateral or what the amount of increase was warranted by the day's transactions; but for the purpose of determining what the Schwab-Kepner Company were entitled to under the contract, it would be necessary to know what the balance was at the beginning of the day. It might also be necessary to know whether there had been any cancellations and what the bleachery overdraft was, and it depends upon how readily this information was available, and that I have no knowledge of. 4340

Q. How would you determine what the balance was on any given date, from the records which are in evidence which were in Dockendorff's possession at that time. 1341

A. The balance of the loan is shown by the account current, but the loan value of the collateral is now shown by any of the exhibits in evidence.

Q. Well, in order to strike a balance, you would have to find out how much he had loaned the Schwab-Kepner Company?

A. Yes.

Q. And how much collateral they had

4342 A. No, what I mean to say is this. There are three subdivisions of the collateral here, the overdue, the XC and the current collateral. Now, the overdues and the XC's, Mr. Dockendorff was under no obligation to include in the total amount upon which the loan was based, he was not under obligation to consider them as having any loan value. The current collateral he was under obligation to consider as having a loan value of 80, less 4, it would be necesary to know not only the amount of the actual loan, but also the amount which Dockendorff was obligated to loan upon the collateral which he held and in order to do that it would
4343 be necessary to have the collateral distributed between XC, overdue and current collateral.

Q. Each separate series of collateral alone?

A. Yes.

Q. And is that shown by any of the exhibits in evidence?

A. No, sir.

Q. So that from the exhibits in evidence is it possible to determine what the amount of advance that the Schwab-Kepner Company was entitled to from Dockendorff on any specific date was?

A. No, it certainly could not be done, because there is the other factor of the bleachery overdraft.

4344 Re-redirect examination by Mr. Cohen:

Q. Did you include, in making your answer to Mr. Wolf, all of the exhibits that are in evidence, including the report of Suffern & Son, the recapitulation of the collateral and the remittance sheets?

Mr. Wolf: I object to the question, as leading, and if counsel means the recapitulation sheets referred to by the witness, I further object upon the ground that they are not in evidence.

Mr. Cohen: I mean the recapitulation 4345
of the exhibits in evidence, which recapitulation is in evidence.

Mr. Wolf: Objected to as leading.

Objection sustained.

Q. When you answered the last question of Mr. Wolf, what exhibits did you have in mind?

A. I had in mind the overdue charge slips, the collateral sheets, and the remittance sheets, and the account current.

Q. Anything else?

A. No, sir.

Q. You were asked by Mr. Wolf with regard to 4346
certain documents that you thought Suffern & Son should have examined before making their reports and you referred to the accounts of the Schwab-Kepner Company with its customers contained in the Schwab-Kepner Company's books, the account in the same books with J. E. Dockendorff, the testimony of Mr. Williams to the effect that there had been $120,000 of cancellations and whatever records the Schwab-Kepner Company had bearing upon these transactions, the testimony of Mr. Williams in reference to the D. O. Tatum, Ferguson-McKinney and Winn Ferguson accounts, together with records of the Schwab-Kepner Company bearing upon those transactions and last and foremost, 4347
the contract; and in your answer you started to explain in what respects these documents bore upon your criticism, and that portion of your answer was stricken out; now, will you please explain what respects those documents which you have mentioned would be valuable in checking up or formulating the theory an expert should deduce?

Mr. Wolf: Objected to as purely speculative and assuming that the witness has knowledge of the contents of the Schwab-Kepner books.

4348 Objection overruled.

Mr. Wolf: I further object upon the ground that the witness' testimony is incompetent, immaterial and irrelevant and not the best evidence, that the books themselves are the best evidence and his testimony is based upon something not in evidence.

Objection overruled.

A. In the preparation of such a report, I would have examined the customer's accounts for the purpose of determining whether or not they showed that all the accounts were assigned to Dockendorff and whether they showed that at any time subse-
4349 quent to the assignment they again came into the possession of the Schwab-Kepner Company by Dockendorff releasing his lien thereon. When I say customers' accounts, I mean the customers' account with the Schwab-Kepner Company in the Schwab-Kepner Company books; I would have examined the account in the Schwab-Kepner Company books with J. E. Dockendorff, for the purpose of determining whether this account showed that the loan between the Schwab-Kepner Company and Dockendorff was one loan or a series of loans, each separate advance constituting a separate loan. If there were one account only, it would have indicated to my mind
4350 that the transaction was one loan; I would have examined the testimony of Mr. Williams to the effect that there had been cancellations of $120,000 in the early part of November and whatever records the Schwab-Kepner Company had bearing upon this transaction for the purpose of verifying that fact and if found correct to make such adjustment of the collateral as would conform to the actual facts; I would have examined the testimony of Mr. Williams with reference to the D. O. Tatum, Ferguson-McKinney and Winn Ferguson accounts along the same lines as I have mentioned in discussing

the cancellations of $120,000; I would have ex- 4351
amined the contract for the purpose of determining whether it showed the loan was one loan or that each separate advance constituted a separate loan, and also for the purpose of determining whether the X C accounts were collateral of J. E. Dockendorff and also for the purpose of determining whether the overdues when they were charged back remained the collateral of Dockendorff.

Re-recross examination by Mr. Wolf:

Q. Did you ever examine the account of the Schwab-Kepner Company with J. E. Dockendorff, as shown by their books, by the books of the Schwab-Kepner Company? 4352

A. I saw the account, yes. I didn't examine it in detail.

Q. Did you examine it for the purpose suggested in your last answer?

A. I really don't know. It may have been just as a matter of curiosity. The book was here and I asked if there was any objection to my looking at it and I was told that there was not.

Q. Who told you that?

A. My recollection is that it was you, Mr. Wolf.

Q. Counsel for the Trustee told you that there wasn't any objection to your seeing it?

A. Yes. 4353

Q. So that it is the fact that that book was as available to you as it was to Suffern & Son?

A. No, I wouldn't say that, because at the time that I was making my examination, I asked for an opportunity to look at those books and at that time the opportunity was denied to me.

Q. Can you say whether or not the entries in the account of the Schwab-Kepner Company with Mr. Dockendorff, contained in the Schwab-Kepner Company books, would throw any light on this contro-

4354 versy? Not as an accountant but from an actual investigation of the books.

Mr. Cohen: Objected to as not a proper question and the books are not in evidence.

Objection sustained.

Q. Have you ever examined any other books of account of the Schwab-Kepner Company, anything else beyond the account of the Schwab-Kepner Company with Dockendorff?

A. Nothing except the pages of the trial balance book which you offered in evidence.

Q. They are in evidence, are they not?

4355 A. Yes, sir.

Q. Mr. Stern, upon the contract which is in evidence, upon the collateral sheets, the remittance sheets and the charge back slips and the checks to Mr. Dockendorff of the Schwab-Kepner Company, could you determine from those papers upon any given date what advance the Schwab-Kepner Company was entitled to under the contract?

A. Not without knowing the previous balance and the amount of the bleachery overdraft.

Mr. Wolf: I move to strike out the answer as not responsive.

4356 Mr. Cohen: Objected to, this witness is an accountant.

Motion denied.

Q. What do you mean by the previous balance?

A. Whether the loan at the beginning of the day was more than the loan value of the collateral warranted, or less. In other words, whether there was still some money which Dockendorff was warranted in loaning to the Schwab-Kepner Company or whether he already had exceeded in his loan the amount which he was warranted in loaning.

Q. Is there anything that shows that in the

remittance sheets, the collateral sheets, the charge back slips, the checks and the contract? 4357

A. No, sir.

Q. You also said you would have to know the amount of the bleachery overdraft?

A. Yes, sir.

Q. What would be the proces of determining that?

A. That would be merely such knowledge as Beckendorff may have had that certain accounts which he received had not yet been shipped and that he had not got bills of lading or warehouse receipts for those accounts, and that, having a certain number of such accounts assigned to him, 4358 he may have taken that factor into consideration in determining the amount of the loan.

Sworn to before me this 9th day of June, 1911.

Adjourned to Wednesday, June 14th, 1911, at 10:30 A. M.

4359

4360 UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

In the Matter
of
SCHWAB-KEPNER COMPANY,
Bankrupt.

Continuation of examination of witnesses on hearing on petition of John E. Dockendorff, before Edwin G. Adams, Referee, as Special Master,
4361 at No. 165 Broadway, New York City, on Wednesday, June 14th, 1911, at 10:30 A. M.

PRESENT:

JULIUS HENRY COHEN and GERARD B. TOWNSEND, Attorneys for Petitioner.
RALPH WOLF and GARRARD GLEN, Attorneys for Trustee.

JOHN E. DOCKENDORFF, recalled.

Examination by Mr. Cohen:

Q. Mr. Dockendorff, how long have you been
4362 a private banker?

Mr. Wolf: Objected to on the ground that it assumes that Mr. Dockendorff is a private banker.

Question withdrawn.

Q. What is your business, Mr. Dockendorff?
A. I am a banker.
Q. How long have you been a banker?
A. For the past six or seven years.
Q. Have you done a business of lending money on accounts receivable for some time?
A. I have.

Q. For others as well as for yourself? 4363

A. I have.

Q. In the business which you have done either as a principal or agent has there been any usual or ordinary course of business with reference to notice to the debtors? Answer that yes or no.

Mr. Wolf: Objected to as immaterial, incompetent and irrelevant, not susceptible of a general course of business, it depended upon the contract between the parties.

Mr. Cohen: This is not for the purpose of the contract but for the purpose of showing that there was nothing unusual in the transactions of the Schwab-Kepner 4364
Company with Dockendorff.

Master: If you are trying to establish a custom you cannot show the custom there by the business of Dockendorff. Do you mean that you are trying to show that that was not an unusual custom in his line of business or in his own office?

Mr. Cohen: In his own office I am asking now.

Mr. Wolf: Then, we object to it as incompetent.

Mr. Cohen: The answer sets up as an affirmative defense and alleged fraudulent 4365
scheme between Mr. Dockendorff and the Schwab-Kepner Company, part of which consists in his taking assignments of accounts without giving notice to the debtors of the assignment at the time of the assignment. I want to show that that is the usual method of doing business in his office.

Master: Let us assume that this was a fraudulent transaction, let us assume that Mr. Dockendorff's business is devoted to fraudulent transactions, what difference

4366 would it make whether they were always done in the same way?

Mr. Cohen: The objection that is urged is that it was an unusual method of doing business. Mr. Kepner testified that at the very first interview with Mr. Dockendorff looking towards the making of the contract Mr. Dockendorff informed him, and he, Kepner, knew that that was the usual method in which Dockendorff did business and there was no objection raised to the testimony at that point. It does seem to me, Mr. Referee, that for the purpose of showing that the transactions were not unusual or extraordinary it would be perfectly competent to know what the usual and ordinary methods of business were on the part of the banking firms. If it be claimed that it is fraudulent *per se* that is one thing, but it is alleged as one detail of a fraudulent scheme. If it be true that Mr. Dockendorff is conducting a fraud with other concerns it would seem that there would have to be some end to that. The fraud charge consists of various details which have not been proven at all and it is essential to the Trustee also that he shall prove all that. In any case where the unusual is charged it is perfectly competent to show the usual and the ordinary.

4367

4368

Mr. Wolf: You are not showing the usual course of business by showing what Dockendorff's usual is.

Objection sustained.

Q. Before you began doing business with the Schwab-Kepner Company, did you make any investigation as to their financial standing and character upon which you subsequently relied?

A. I did.

4369

Q. What investigation did you make?

Mr. Wolf: Fix the time first.

Q. When did you begin doing business with them?

A. I think it was in September, 1908.

Q. And was it just prior to that time that you made the investigation?

A. Shortly before.

Q. How long before?

A. A few days before, I had ample time to receive letters by mail.

Q. What investigation did you make?

4370

Mr. Wolf: Objected to as immaterial, incompetent and irrelevant, entirely too remote, beyond any period charged in the answer or bill that Dockendorff had reasonable cause to believe that the Schwab-Kepner Company was insolvent.

Objection overruled.

A. We asked Mr. Kepner for references, which he gave; among them a large number of mills with whom he was doing business and also some banks and he gave us a statement and I think a Bradstreet report also.

4371

Mr. Wolf: I move to strike out the answer on the ground that it is a conclusion of the witness.

Mr. Cohen: I think that is the substance of the conversation. I cannot bring out all the details at once.

Objection overruled. Motion denied.

Q. Did you subsequently make inquiries of the persons to whom you were referred?

Mr. Wolf: Objected to unless the per

4372 sons are named of whom Mr. Dockendorff did make inquiries.

Overruled.

A. I wrote some letters to some of the references that he gave me and I had others written by one of my friends.

Q. Did you receive replies from these various persons?

Mr. Wolf: Objected to.

Overruled.

A. I did.

Q. Have you those replies, Mr. Dockendorff?

4373 A. I have.

Q. Let us have them.

Witness hands counsel twelve letters.

Q. Was your opinion as to the financial and moral responsibility of the Schwab-Kepner Company affected by these letters?

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant, calling for the operation of the witness's mind and for a conclusion.

Mr. Cohen: If your Honor pleases, in

4374 any case, even in larceny where the witness is influenced by statements which he received for the purpose of showing his mental operation, the question, "Did you rely upon the statement" or "Was your mind affected by the statement," is allowed. What the mental attitude is of a man who has been influenced in a matter is perfectly proper and it is perfectly proper to ask the man whose mind has been influenced precisely what did affect his mind and what did influence him. The charge is made

here that with reasonable cause to believe 4375
that this concern was in failing circumstances and was defrauding its creditors we were doing a certain kind of business with them. Now, there is no better evidence in the world of our good faith than to show the circumstances leading up to the transactions and to show our reliance on them and how the mind of a man is affected. It is some evidence to show his good faith, to show what he relied upon. It is always proper to ask, did you, on such and such a date believe that the concern was insolvent, did you have any information that led you to believe. Always in a prosecution for larceny the Court of Appeals has held that you may ask the witness, showing the statement, did you rely upon these figures in extending credit, always for the purpose of showing whether the complainant was influenced by something that the defendant did and in an action for fraud one of the essential elements is to show that he relied upon a false representation. Now, if Dockendorff was misled it would be a perfect defense to all of the things that he did. It seems to me we 4377
are entitled to show the circumstances and if this concern, as they claim, has been doing something that they shouldn't have done we are entitled to show the practice.

Master: The question should be what investigation he made and we can infer from his subsequent actions what impression he received.

Mr. Cohen: I am entitled to show as I was by Kepner what the mental attitudes of these people were and I have no other way

4378 of showing it; I want to show by this witness how he began to do business with these people, how he made investigations with regard to their moral and financial responsibility, how he relied upon their representations, how it affected his mind; how subsequently he got additional information showing progress in their business, when the change in mental attitude first came, and for the purpose of showing his good faith and negativing the allegation he is under of entering into a fraudulent conspiracy I am not only entitled to show the
4379 circumstances which justified a reasonably prudent man in acting as Mr. Dockendorff did, but I am also entitled to show how his mind was affected from time to time upon exactly the same theory that we were entitled to show by Mr. Kepner that his belief in a rising market about to come induced him to go on doing business. We are dealing with a situation between banker and merchant and the whole question comes down to a question of good faith because the Courts all hold that because a man is in financial straits does not make it im-
4380 perative for him to discontinue business, indeed, the Court holds that it is his duty to preserve his assets and not waste them in bankruptcy or insolvency, and the element of good faith is the important element in these cases and I am entitled to show what circumstances did affect Mr. Dockendorff's mind. It may not convince your Honor, perhaps it does not amount to what Mr. Glen calls reasonable cause to believe or not to believe, but I am entitled to show that at various periods in these transac-

tions from the beginning to the end there 4381
was a mental attitude that changed from time to time because of certain circumstances and to show just what those changes were. I submit, sir, that this is a class of testimony that is of such consequence that if your Honor should be in error we ought to have it in the record.

Mr. Wolf: That makes the question a question of a fluctuating state of mind. It isn't a question of a state of mind at all, it is a question of the facts known to the Court and the Judges that he did or did not have reasonable cause to believe. What- 4382
ever his mind was affected by, it is not a question of his state of mind but a question of law for the Court to determine from the facts as known to the Court.

Master: I will admit the testimony. At this time it does not impress me as being very important because I think the whole question is what investigation he made and what the information was that he obtained and then it is a question of what impression it should have produced upon his mind or would have produced upon the mind of an ordinarily prudent man.

Objection overruled. 4383

Mr. Cohen: I am quite convinced that when your Honor will have read the record again as I have and seen the kind of testimony elicited from Mr. Kepner and Mr. Williams by counsel for the Trustee, that this testimony will have just as great weight as the mental operations that they were permitted to testify to. Your Honor will not forget, I am sure, that Mr. Wolf has charged Mr. Dockendorff with having

4384 exactly the same mind, legally as Mr. Williams.

Question read.

A. It was.

Mr. Cohen: I offer these twelve letters in evidence.

Mr. Wolf: Most of these letters seem to be addressed to G. B. Longstreet, and we object to their going in evidence at this time unless their relationship to Mr. Dockendorff is explained in some way so that we can have an intelligent idea of how Mr.

4385 Dockendorff came to rely upon them.

Master: Mr. Dockendorff testified that these were the letters he received in answer to his inquiry, did he not?

Mr. Wolf: He said in answer to his inquiry or that of a friend's.

Objection overruled.

Received in evidence and marked Exhibit P1301, consisting of 12 sheets.

The exhibit reads as follows:

Exhibit P1301.

First Sheet.

4386

"DAVIS MILLS"
Fine and Fancy Cotton Goods.
Arthur H. Mason, Treasurer.

Fall River, Mass., Sept. 19, 1908

G. B. Longstreet, Pres.,
National Bank of Auburn,
Auburn, N. Y.

Dear Sir:

Your favor of the 8th at hand; contents carefully noted. In reply would say we have done

business with Messrs. Schwab-Kepner for a long 4387
time, and while at times, since the financial depression we have given them a little extra dating, we have always found them to meet any arrangements that were made, promptly. From our New York connection we understand them to be entirely trustworthy. We are now running on contracts with them and giving them a line of credit.

Yours truly,

DAVIS MILLS.

(Signed) A. H. Mason, Treasurer."

Second Sheet.

4388

"Union Exchange Bank.
Fifth Avenue and 21st Street.

New York, Sept. 9th, 1908.

G. B. Longstreet, Esq., Pres.,
National Bank of Auburn,
Auburn, N. Y.

Dear Sir:

In reply to yours of the 8th inst. we beg to say that Messrs. Schwab-Kepner Co. have been depositors of ours since June, 1906, and have always maintained a very satisfactory account.

4389

In the past we have loaned them as high as $75,000, which has been well warranted by the balances which they have carried. They cleaned up with us entirely during the early part of this year, and at the present time they owe us nothing and have a very small balance to their credit.

From all information which we have on file, we believe Mr. Kepner, the President, to be a man of first class reputation and one who is well regarded generally. As to their financial condition, you will see by the agency reports that

4390 they claim to be worth in the neighborhood of $75,000. with rather heavy liabilities.

Judging from the present appearance of the account it looks as if was their intention to close out entirely.

Very truly yours,

Geo. B. Connley,
Assistant Cashier.

O F

Third Sheet.

WILSON & BRADBURY
4391 Commission Merchants
Cottons and Woolens
Philadelphia Store
217 Chestnut Street. 93-95 Franklin Street.

New York, September 9, 1908.

Dictated by W. J. F.

G. B. Longstreet, Pres.,
National Bank of Auburn,
Auburn, N. Y.

Dear Sir:—

Your favor of the 8th inst' duly received. In
4392 regard to the personal standing of Mr. Kepner, of Schwab-Kepner Co., writer would say that we have the highest possible opinion of this gentleman. We believe him to be strictly honorable, most industrious, and deserving of success and consideration. Of course the experience of the last nine or ten months have been very severe with almost all such concerns, but we do not believe that these people have suffered more than others, probably have made out as well as the best.

We cannot state the financial worth of the Company, but believe they have a substantial

surplus, and that they will take care of their 4393
payments correctly on easy terms, which we understand different concerns are conceding them.

Very truly yours,
(Signed) W. J. Fullerton."

Fourth Sheet.

D. O. TATUM,
Cotton Goods Broker,
51 Leonard Street.

New York, Sept. 9, 1908.

Mr. G. B. Longstreet, Pres.,
National Bank of Auburn,
Auburn, N. Y. 4394

Dear Sir:—

Replying to yours of the 8th inst. would say that we deal quite largely with Schwab-Kepner Co. The latter part of last year they seemed to be in some difficulties and paid slowly and asked us to postpone deliveries, etc., but we consider that they lived up manfully to their contracts. We consider Mr. Kepner's general standing excellent and believe in his honesty. We are doing a large business with him all the time.

Respectfully yours,
D. O. TATUM 4395
J. C. Tatum."

Fifth Sheet.

CORNELL MILLS
Fred E. Waterman, Treas.

Fall River, Mass, Sept. 9, 1908

Mr. G. B. Longstreet, Pres.,
National Bank of Auburn,
Auburn, N. Y.

Dear Sir:—

Your favor of the 8th inst. at hand with in-

4396 quiry in relation to the Schwab-Kepner Co. of 350 Broadway New York, N. Y. We have no information of the financial worth of this company except such as we obtained from the commercial agencies. Our business relations with the Schwab-Kepner people have always been pleasant and they have always paid our bills promptly as per agreement.

Yours truly,

F. E. Waterman, Treas."

Sixth Sheet.

4397 MERCHANTS MANUFACTURING CO.
AMERICAN LINEN COMPANY.

J. E. Osborn, Treasurer.

Fall River, Mass., Sept. 9, 1908.

G. R. Longsheet, Pres.
Auburn, N. Y.

Answering yours of the 8th, I consider Mr. Kepner one of the class of young merchants that ought to be encouraged and backed. I have had considerable dealing with him and always found him perfectly straightforward and in all his dealings he has been so far as I am concerned
4398 perfectly honest and has done as agreed. The financial standing of the Co. while not what might be considered big has always been shown to me as sufficiently strong to liquidate easily but I think his general statements you can bank on as reliable. We give him quite a line of credit

Yours

J. E. Osborn, Treasurer."

Seventh Sheet. 4399

LUTHER MANUFACTURING COMPANY
240 Hartwell Street

Fall River, Mass. Sept. 10, 1908.

George B. Longstreet, Esq.,
The National Bank of Auburn,
Auburn, N. Y.

Dear Sir:—Replying to yours of 8th regarding the Schwab-Kepner Co., 350 Broadway, N. Y. the writer has always had a good opinion of Mr. Kepner as an honorable business man. Regarding the financial worth of the Company, we have 4400
no knowledge, having never seen their statement. At the time of the panic last Fall we had several contracts with them and, as we did with other customers, we gave them additional time and up some cases accepted notes in payment and up to date they have met their payments when due, and have paid interest for all extra time without question.

Very truly yours,
LUTHER MFG. CO.
V. Chas. B. Luther, Treas."

Eighth Sheet. 4401

FIDELITY TRUST COMPANY
Corner of Chambers and Hudson Streets
Capital and Surplus $1,500,000.00

New York, Sept. 10th, 1908.

Mr. G. B. Longstreet, President,
The National Bank of Auburn,
Auburn, N. Y.

Dear Sir:—

In reply to your favor of the 8th inst., beg to

4402 say that we have no definite information respecting either the company or the individual about whom you inquire.

The concern carries an account with us, but we have never loaned them any money, and are not closely acquainted with their affairs. So far as we are aware they are reputable people.

Asking that you will consider this information as confidential, and without prejudice or liability to us in any way, we are,

Very truly yours,

Samuel S. Conover.
President."

4403

Ninth Sheet.

GRANITE MILLS

Fall River, Mass. Sept. 10, 1908.

G. B. Longstreet, Esq., President,
National Bank of Auburn,
Auburn, N. Y.

Dear Sir:—

Your favor of the 8th received, relative to the general standing of Messrs. Schwab-Kepner Co. This concern, though of small capital, stands very
4404 well amongst the mills, and for the following reasons.

Last year, Mr. Kepner provided gray goods for his normal business and purchased the same in a conservative manner. When the financial panic struck the trade, he, with other houses, was called upon to accept cancellations of contracts and could not make collections.

He therefore had to ask the mills to defer deliveries and to wait for payments. However, he stuck to his contracts, although the price had

fallen in a marked degree in every case of which I am aware. He came here personally, explained the situation, and made several arrangements with the mills here, which he has since lived up to. 4405

His reputation here is that of an honorable merchant who means to do the right thing and one who means to meet every engagement and fulfil every obligation he may enter into. This cannot be said of many houses of far better financial standing than the one referred to.

Yours truly,

Chas. M. Shove, Tr.

Dic. C. M. S." 4406

Tenth Sheet.

"230 Riverside Drive

New York, Sept. 8, 1908

J. E. Dockendorff & Co.,
20 Broad Street,
New York City.

Gentlemen:—

Replying to your letter of the 5th inst., containing inquiry as to the responsibility of The Schwab-Kepner Company, I desire to say that I have had no connection with that Company since January of this year. Previous to that time the business was conducted by myself and Mr. Kepner as partners, and upon the dissolution of the partnership the present corporation, of which I am not a stockholder, was formed. 4407

I have not kept in touch with the affairs of the corporation and therefore can give you no opinion of any value as to its present responsibility; but I have always found Mr. Kepner in his business

4408 relations with me straightforward and honest and I believe any statement that he should make to you with regard to the financial condition of the Company would represent the facts.

Yours very truly,

S/B

P. A. Schwab."

Eleventh Sheet.

"Charles M. Schwab,
111 Broadway,
New York.

4409 Sept. 9th, 1908

Mr. J. E. Dockendorff,
20 Broad Street, New York.

Dear Sir:

Replying to your letter of the 5th to Mr. Schwab. He had always understood that the Schwab-Kepner Company met their obligations, and transactions he had with them were carried out faithfully. He, however, is not in a position to give you any further information than this.

Yours very truly,

Charles Wren, Sec'y."

4410

Twelfth Sheet.

THE BANK OF NORTH AMERICA

Philadelphia.

September 9th, 1908.

Geo. B. Longstreet, Esq., President,
National Bank of Auburn,
Auburn, N. Y.

Dear Sir:

We beg to acknowledge receipt, this morning of

yours of the 8th inst., and in response thereto, de- 4411
sire to say that the Schwab-Kepner Company are clients of this Bank and have been for some time past. We have found them thoroughly straightforward, honorable, industrious, and active people.

Mr. Kepner, the moving spirit of the concern, is a young man of apparently indomitable courage, and possesses the ability of a good salesman. We have both discounted their Receivables for them liberally, and loaned them largely upon their merchandise as collateral, the merchandise being at the Bleacheries, where their goods are converted. We credit their statements, which show a rapid increase in net capital.

4412

The only criticism we have to make is, they are doing too much business for their capital. However, they seem to have passed through the troublesome times of last Fall without any serious difficulty. Their business with this Bank has been altogether satisfactory, thus far.

Trusting this may be of service to you, we are,

Very truly yours,

H. G. Mechener,
President."

Q. Mr. Dockendorff, will you please explain why 4413
you got this information and this correspondence through Mr. Longstreet?

A. I asked Mr. Longstreet to write to some of these people direct as he was President of a National Bank and I thought he would be able to secure more intimate information from these people by their being addressed by a bank than by myself, a national bank than by myself.

Q. Have you known Mr. Longstreet for a long time?

A. For some ten or twelve years.

Q. Your relations are friendly with him?

4414 A. Very.

Q. He did this as a favor to you?

A. He did and forwarded the letters to me with some remarks of his own.

Q. Now, you say that you received a statement from the Schwab-Kepner Company—I call your attention to Exhibit P201 at pages 572 and 573 of the record and ask you whether that is the statement to which you refer?

A. It is.

Q. And that shows assets of $313,586.52 and liabilities of $242,880.93 and a capital and surplus of $70,705.59 and net sales for the year 1907 of
4415 $986,725.29; was your mind affected by that statement and by the condition of the assets and liabilities disclosed?

Mr. Wolf: Same objection.

Overruled.

A. It was.

Q. Now, subsequently did you receive other statements while you were doing business with the Schwab-Kepner Company from them?

A. I did.

Q. And did you receive among those statements the statement offered in evidence and received as
4416 Exhibit P202, appearing at page 571 of the record?

A. I did.

Q. The statement dated September 4th, 1908?

A. Yes.

Q. And did that statement show a capital and surplus of $78,804.76?

Mr. Wolf: Objected to.

Objection sustained.

Q. And did you also receive a statement appear-

ing in evidence as Exhbit P204 dated January 9th, 1909, appearing at page 576 of the record? 4417

A. I did.

Q. Did you also receive the exhibit put in evidence and marked Exhibit P205, dated December 22, 1909 appearing at page 577 of the record?

A. I did.

Q. And did you receive these statements at or about the time that they bear date?

A. The statements bear the date when they were sent to me, I believe and they also bear the date of the condition of the firm, for example in Exhibit P205 I believe I received it on December 22nd and it shows the condition of the firm as of October 1st, 1909. 4418

Mr. Wolf: I move to strike out the answer as not responsive.

Motion denied.

Q. I call your attention to the fact that it appears from this exhibit, Mr. Dockendorff, that the capital and surplus as of the first of January, 1908 is stated to be $70,705, and the capital and surplus as of the first of September, 1908, is $179,404, the capital and surplus as of January, 1909 is $80,800, the capital and surplus as of the first of October is $109,840, that the capital and surplus as of January, 1910, was $56,326, did you believe those statements to be true and the statement as to the amount of capital and surplus to be true? 4419

Mr. Wolf: Same objection.

Overruled.

A. I did.

Q. And did you rely upon those figures?

Mr. Wolf: Same objection.

Overruled.

4420 A. I did.

It is understood that the objection of counsel for the Trustee is made to all this line of testimony without reiterating the objection and that the same ruling applies.

Q. Did the comparison between these statements have any effect upon your mind, Mr. Dockendorff?

A. It did; and it also confirmed statements made by Mr. Kepner that he was making money all the time.

Mr. Wolf: I move to strike out the last
4421 part of the answer.

Mr. Cohen: I consent.

The Master: Everything after the words "I did" is to be stricken out.

Q. What was the effect?

Mr. Wolf: We object to that and I want to call your Honor's attention to this fact; the previous questions merely asked Mr. Dockendorff whether these papers had an effect upon his mind; now we are going into his mental operation and asking what effect it did have on his mind. It seems to me a
4422 very much broader question than has been allowed so far.

Mr. Cohen: The question before was the same thing.

Mr. Wolf: It applies to the whole situation — whether a man relied calls for testimony of a certain act, but now we are not asking for anything Mr. Dockendorff did, but his opinion. It seems to me infinitely broader than anything asked before and it is immaterial, incompetent and irrelevant as calling for Dockendorff's opinion.

The Master: I think this is admissible on

the same theory that the other testimony would be admissible. 4423

Objection overruled.

Question read.

A. That the Schwab-Kepner Company was merchandising at a profit and that they were improving their financial condition steadily.

Q. Did anything during the year 1908 happen to change that opinion which you formed?

Mr. Wolf: I object as calling for the conclusion of the witness, not stating what did happen so that we came for our own conclusions.

The Master: I suppose the question should read "Did you have occasion to change your mind." 4424

Q. Did you have any occasion to change your opinion during 1908, as to that condition?

A. Not the slightest.

Q. During 1909?

A. Not the slightest.

Q. Now, in the year 1910, when, if ever did you change your opinion?

Mr. Wolf: Objected to, we are coming down to the particular period in question and it seems to me that now facts should be proven and not opinions. 4425

Overruled.

A. I may say that up to May 1910 there was nothing that transpired that would have caused the slightest change in my impressions; that after May I found that their bookkeeping methods were not quite as good as I thought they were or should have been, that they were rather lax in fact; but I did not know that the firm was losing

4426 heavily in merchandising until practically after the Receivers were appointed.

Mr. Wolf: I move to strike out the answer or that part of the answer "I did not know that the firm was losing heavily in merchandising until after the Receivers were appointed" as a conclusion of the witness and as not responsive.

Motion denied.

Q. Now, did you form an opinion based upon the statements and letters which you received as to the solvency or insolvency of the Schwab-Kepner Com-
4427 pany at the time of the receipt of the letters and statements?

Mr. Wolf: I object, there is no time fixed by the question and the time covered is a period of years, as we have statements for 1908, 1909 and 1910.

Question withdrawn.

Q. Did you in 1908 at the time of the receipt of the letters and statements form any opinion as to the solvency or insolvency of the Schwab-Kepner Company?

4428 Mr. Wolf: We object as incompetent, irrelevant and immaterial and I went to call your Honor's attention to the fact that when Mr. Williams was on the stand that question was objected to by Mr. Cohen and the objection was sustained. We asked Mr. Williams whether on August 1st, 1910 he believed the Schwab-Kepner Company to be insolvent and Mr. Cohen objected to that as calling for a conclusion.

Objection overruled.

Question read.

A. I did. 4429

Q. And what was that opinion?

A. That they were solvent.

Q. When, if ever, did that opinion change?

A. Not until after the receivership.

Q. So that during the year 1910 throughout you believed that the Schwab-Kepner Company was solvent, did you?

A. Absolutely.

Q. Did you from time to time while you were doing business with the Schwab-Kepner Company have any conversation with Mr. Kepner as to the general condition of the business of the Schwab-Kepner Company? 4430

A. I don't quite understand the question, Mr. Cohen.

Q. Did you have any conversation with Mr. Kepner during the year 1908 relating to the progress or lack of progress of their business?

A. Only in a general way.

Q. During the year 1909 did you have any such conversation?

A. Only in a general way.

Q. Did those conversations relate to the same general subject matter?

A. Yes.

Q. Can you separate the conversations in your mind and fix any specific time that any of them occurred? 4431

A. I can not.

Q. What was the general subject of the conversations and what did he say?

Mr. Wolf: Objected to unless the witness can fix the specific time and place. These are 1908 and 1909 conversations.

Mr. Cohen: I call your Honor's attention to the fact that there are pages and pages of Mr. Kepner's testimony based upon

1432 exactly the same line of questioning by Mr. Wolf. Mr. Kepner would testify that he couldn't separate the conversations, that they were all of the same general nature and that he couldn't fix any date.

Master: Suppose you separate your questions.

Q. What was the general subject of conversation?

A. Of the progress of the Schwab-Kepner Company.

Q. Any other topic?

1433 A. Some times for questions of additional credits, and they were expanding right along.

Q. Now, what was said at that time?

Mr. Wolf: I object to the question unless the time is fixed.

Master: You are referring now to a number of different conversations. I don't think that the witness has said that Mr. Kepner told him the same thing on each occasion. He said that he could not separate the conversations and I think what you ought to ask him is to give his best recollection of what was said by Mr. Kepner to him and

1434 what he said, separating the conversations if he can and if he cannot to give the general statement of what was said.

Mr. Cohen: I accept your Honor's suggestion.

Q. Give us your best recollection of what was said at those conversations with reference to the progress of the business, separating the conversations if you can.

A. I don't believe I can separate the conversations but I do recall that several times during

those years Mr. Kepner stated that he was mak- 4435
ing money.

Q. By he, of course, you understood, his company?

A. His company.

Q. During the years 1908 and 1909 did you believe that to be the fact?

A. I did.

Q. And did you rely upon Mr. Kepner's oral statements as well as the written papers that are in evidence?

A. I did.

Q. Now, during the year 1910 was your attention called to any laxity in the bookkeeping meth- 4436
ods of the Schwab-Kepner Company?

A. It was.

Q. When was it called to your attention?

A. Sometime the latter part of May.

Q. What circumstances led up to that.

A. I think through a call of some representative that we would send up there occasionally to investigate the disposition of the overdues and they found that certain credits for merchandise returned had not been reported.

Q. What do you mean by disposition of the overdues in your answer?

A. To ascertain why we did not receive remit- 4437
tances from the debtors for overdues that had been open on our books for quite some time, perhaps two or three months even after the period when they became overdue.

Q. And what steps did you take to ascertain what the reason was?

A. I sent one of my representatives to the office to have the ledger account of this particular individual looked up.

Q. You stated something in your answer to my last question, something about credits not having

been made in the books, what did you mean by that?

A. Credits not having been reported to me for returned merchandise.

Q. Just what do you mean by credits for returned merchandise?

A. The Schwab-Kepner Company would issue credits to the debtors for merchandise returned representing the invoices that had been assigned to me; if these credits were not forwarded to me I would still hold that account open on my books.

Q. Let me see if I can put that in a little clearer language; the account against the customer is an account for goods sold and delivered to the customer?

A. Yes, sir.

Q. If the merchandise is returned by the customer to the Schwab-Kepner Company and accepted by the Schwab-Kepner Company, he is entitled to credit for the returned merchandise?

A. Yes, sir.

Q. Is that what you mean by credit?

A. Yes, sir.

Q. And that credit would ordinarily be indicated on the books of the Schwab-Kepner Company?

A. Yes.

Q. And should be communicated to you in them?

A. Yes.

Q. And the laxity in the bookkeeping consisted in the fact that these credits did not appear upon the books?

A. Were not passed at the proper time.

Q. What do you mean by passed at the proper time?

Q. Were not entered into the books at the proper time, and in some instances when they were entered were not reported to my office.

Q. Did you take any steps to correct that laxity 4441
of bookkeeping?

A. I did.

Q. What steps did you take?

A. I secured the services of Mr. Hardy, who was engaged by the Schwab-Kepner Company to see that the bookkeeping methods would not continue in such a lax condition.

Mr. Wolf: That answer in a very adroit manner hauls in a very improper statement, that Mr. Hardy was employed by the Schwab-Kepner Company to do certain things and we move to strike out the answer as being a conclusion of the witness. 4442

A. Just before the first of June, I don't recall the exact date.

Q. Now, will you please give the conversation?

Mr. Wolf: I object to that and ask leave to show that the engagement of Mr. Hardy was pursuant to a written agreement as the testimony already shows.

Overruled.

A. I introduced Mr. Kepner to Mr. Hardy and Mr. Kepner agreed to accept Mr. Hardy as an employee, who was to look after the matters relating 4443
to my making advances to the Schwab-Kepner Company in so far as I was concerned, but to be of assistance to the Schwab-Kepner Company in every possible way to prevent lax methods in bookkeeping and to be of any other general assistance that he could be, as Mr. Kepner felt that he required a man of that kind at the time.

Mr. Wolf: I move to strike out the answer as a conclusion of the witness, stating that was agreed to and what Mr. Kepner

4444 felt and as not being responsive to the question.

Motion denied.

Q. Have you stated the whole substance of the conversation?

Mr. Wolf: Objected to as assuming something that isn't in evidence; the witness hasn't stated any conversation he has only stated what Mr. Kepner agreed to and what Mr. Kepner felt.

Overruled.

4445 A. Yes, sir.

Q. Now, as a result of that conversation with Mr. Kepner, what was done?

Mr. Wolf: Objected to as leading and calling for a conclusion.

Overruled.

A. A discussion was had at the time of the various things that Mr. Hardy was to do; a letter was written by me relative to matters that I thought appertained to my particular end of the Schwab-Kepner business, that is, the making of advances against the accounts receivable and Mr. Hardy was taken by Mr. Kepner up to the Schwab
4446 Kepner Company and he was engaged.

Q. You said in your last answer that there were instructions to Mr. Hardy, were there instructions to Mr. Hardy in addition to those contained in the letter?

A. No, sir.

Q. What other steps, if any, did you take toward the improvement of methods of bookkeeping in the Schwab-Kepner Company?

Mr. Wolf: Simply what Mr. Dockendorff did now, is that what you are asking him?

Mr. Cohen: Yes, if Mr. Dockendorff sent an agent up there for the purpose of seeing about something or called in an office boy to go up there and see if things were accurately added up, we would be entitled to know that. 4447

Question read.

A. I don't know of any other, Mr. Cohen, except that I had some chartered accountants sent out only for the purpose of verifying the accounts that were on my ledger cards and checked up with the accounts on the ledgers of the Schwab-Kepner Company.

Q. And who were the accountants? 4448

A. Hart Brothers, Tibbets & Heiron.

Q. Did they subsequently make written reports to you?

A. They did.

Q. Now, after the employment of Mr. Hardy did you or did you not find any improvement in the bookkeeping methods of the Schwab-Kepner Company—

Mr. Wolf: We object to that as calling for a conclusion, unless Mr. Dockendorff is prepared to say that he examined the books.

Q. (continued): —in so far as credits were passed through the books for merchandise returned on accounts held by you? 4449

Objection overruled.

A. I did.

Q. You say you did find an improvement?

A. I found an improvement in the manner in which the collections were reported, etc.

Q. Now, you have stated in answer to questions put to you this morning that you believed the concern to be solvent, based upon these statements

4450 and the letters which you received and the conversations that you had with Mr. Kepner; what, if any, effect on your mind did the irregularities in the bookkeeping methods have with respect to your opinion as to the solvency or insolvency of the Schwab-Kepner Company?

A. At that time?

Q. Yes.

A. Not the slightest. It never was questioned; it never came up for consideration.

Mr. Wolf: I move to strike out the last part of the answer.

4451 Motion denied.

Q. By never questioned you mean it was never questioned by you?

A. It was not, nor in my presence by anyone.

Mr. Wolf: I move to strike out as a conclusion of the witness.

Motion denied.

Q. Now, when did you begin to advance money to the Schwab-Kepner Company upon its accounts receivable?

A. Some time in September, 1908.

Q. Before that time you entered into a written
4452 agreement which is in evidence?

A. I did.

Q. Before entering in to that agreement did you have any conversation with Mr. Kepner as to giving notice to the debtors of the assignment of the accounts?

A. I did, in the beginning, before the first agreement.

Q. And what did you say with reference to that?

A. That our method of business did not require the notification of the debtor.

Q. Is that in fact your method of doing business? 4453

Mr. Wolf: Objected to.
Objection sustained.

Q. Did you thereafter continue from time to time to make advances to the Schwab-Kepner Company?

A. I did.

Q. And did you do so in reliance upon the statements as to their financial condition?

Mr. Wolf: Objected to as leading.
Question withdrawn.

4454

Q. State whether you made such advances upon the statements as to their financial condition made in writing and orally by Mr. Kepner?

Mr. Wolf: Objected to, leading.
Objection sustained.

Q. State whether or not you relied in making advances upon the facts stated by the statements of financial condition submitted to you by the Schwab-Kepner Company?

Mr. Wolf: Same objection.
Objection sustained.

4455

Q. In making the advances to the Schwab-Kepner Company from time to time did you rely upon anything as to their solvency or insolvency?

A. I did.

Q. Upon what did you rely?

A. Upon their statements and upon the investigation I had made of Mr. Kepner personally.

Q. And did you continue to make advances in reliance thereon?

Mr. Wolf: Same objection.
Overruled.

A. I did.

4456 Q. During the period that you were making advances did you have anything to do with the purchase by the Schwab-Kepner Company of merchandise?

A. Not at all, sir.

Q. Or with the sales of merchandise?

A. Not at all, sir.

Q. Did you ever give any advice as to the purchase of merchandise?

Mr. Wolf: Objected to—I haven't any objection if Mr. Cohen will ask Mr. Dockendorff whether that was the subject of the
4457 conversation. I don't know what he meant by advice.

Mr. Cohen: I propose to cover it by various questions.

Objection overruled.

A. No, sir.

Q. Did you ever give any advice as to the sales of merchandise?

A. No, sir.

Q. Did you ever give any suggestions as to the sales of merchandise or the purchases of merchandise?

A. No, sir.

4458 Q. Did you ever discuss the manner of making purchases or sale at any particular prices or from any particular persons?

A. No, sir.

Q. With any officer of the Schwab-Kepner Company?

A. Never.

Q. Did you in any way interfere with the business of the Schwab-Kepner Company with reference to its purchases or sales?

Mr. Wolf: I object as calling for a conclusion and as leading.

Overruled.

A. No, sir. 4459

Q. Now, from time to time, Mr. Dockendorff, did you receive from the Schwab-Kepner Company requests for advances that in your opinion were larger that you were required to give under your agreement?

Mr. Wolf: Objected to as calling for a conclusion of the witness respecting a complicated set of figures, leading and not stating how or under what circumstances the request was made and by whom or when.

Master: I think the question is leading, Mr. Cohen and the only way that you can make it less leading would be to ask him whether at any time he received any such requests and if so how many times, etc. 4460

Mr. Cohen: The rule against leading questions is always subject —you are always permitted to ask leading questions concerning matters not in dispute. I can call your Honor's attention to Mr. Kepner's testimony in which he gave testimony that he was repeatedly asking for more than the 80%. I have to ask a certain number of preliminary questions and I have endeavored to ask only such leading questions concerning matters not in dispute leaving for other questions the things that are in dispute. We could go on this way for two months or more; it is absolutely concealed in the case that Mr. Kepner did ask for more than he was entitled to. I have no objection to counsel making objections which have a rational basis, but when they are made to almost every question and upon every kind of technical ground it seems to me that we only have the effect of either diverting the witness's attention or diverting counsel's attention. 4461

Objection overruled.

4462 A. Yes, sir, frequently.

Q. And did you have conversations with Mr. Kepner on those occasions?

A. I did.

Q. And in these conversations did Mr. Kepner refer to the amounts that he would require from time to time to meet maturing obligations?

A. He did.

Q. And in those conversations did you estimate the amount of the loans to be made to Mr. Kepner?

Mr. Wolf: Objected to as leading and call-
4463 ing for the conclusion of the witness on an important line of testimony in this case.

Objection overruled.

A. I would state how much collateral we would require in order to give him the amount of money that he would be asking at the time.

Q. At the time that you stated the amount of collateral that you would require what, if anything, did you say to him about purchasing or selling merchandise?

A. Nothing whatever, under any conditions.

Q. What, if anything, did you say to him about creating or making accounts receivable?

4464 A. Nothing, ever.

Q. Did you from time to time have conversations with Mr. Kepner in which he requested you to advance more than what he said he understood he was entitled to under the agreement?

Mr. Wolf: Objected to as leading and calling for the conclusion of the witness.

Objection overruled.

A. Yes, but usually those conversations, Mr. Cohen, would be in anticipation of their requests; usually it took place not at the time that they wanted the money, but it was at the time when

they would be discussing what they would require for the next week or ten days. 4465

Q. Did you from time to time advance to Mr. Kepner for his company, moneys which he said he understood to be more than the amount he was entitled to under his contract?

Mr. Wolf: Objected to as calling for a conclusion and as leading and not fixing the time and place of the conversation.

Objection overruled.

A. Frequently.

Q. Now, at those times was there any discussion between you and Mr. Kepner as to any change in the security which you were to receive? 4466

A. No, sir.

Q. Did there come a time when you received security besides the accounts receivable?

A. Yes.

Q. When was that time?

A. In June some time, the latter part of June, the 24th or 27th of June, 1910.

Q. And what was the occasion of your receiving that additional security?

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant.

Overruled. 4467

A. The Schwab-Kepner Company wanted to secure advances from me greater than the 80% of the approved accounts in my possession would warrant their borrowing.

Q. When you say the Schwab-Kepner Company, did you have any conversation with any officer of the Schwab-Kepner Company?

A. Yes, with Mr. Kepner.

Q. And did he state that?

Mr. Wolf: Objected to as leading.

Question withdrawn.

4468 Q. With whom, representing the Schwab-Kepner Company did you have this conversation?

A. Always with Mr. Kepner.

Q. And when you said that the Schwab-Kepner Company wanted more than the amount called for, to whom did you refer as conducting the negotiations?

A. Mr. Kepner.

Q. Now, what did Mr. Kepner say upon these occasions?

A. That he required more money for his business than we were willing to advance him on the accounts receivable.

4469 Q. Have you given the whole of the conversation as you recall it?

A. I think so, yes, sir.

Q. What, if anything, did he say with regard to the needs of his business?

A. That he needed more money.

Q. Did he give any reason for his additional requirements?

A. No particular reasons, other than that his business was growing all the time.

Q. Did he say anything about solvency or insolvency?

A. No, sir.

4470 Q. Was there any question with regard to that?

A. It was never questioned between Mr. Kepner and myself.

Q. Did you inquire of him as to why he needed more money?

A. As I have stated before for the purpose of increasing his business and paying his commitments.

Q. And did you thereafter advance him more money than he understood was required, or stated he understood was required under the agreement?

Mr. Wolf: That your Honor, does not

call for Mr. Dockendorff's opinion, but for his conclusion upon a complicated set of figures, regarding which the figures themselves are the best evidence; it is impossible for Mr. Dockendorff to give any intelligent answer to that question without referring to the complicated figures in this case. 4471

Mr. Cohen: The figures are in evidence and they show that Mr. Dockendorff did do these things and I think we are entitled to show the mental attitude at that time.

The Master: Why not ask him whether in fact he advanced more than both he and Mr. Kepner thought at the time was required under the agreement? 4472

Mr. Wolf: That question in itself might not be objectionable in form, but it is from this standpoint: Mr. Dockendorff and Mr. Kepner may have agreed at a certain time that Dekendorff did over-advance, but that condition was not chronic, it didn't run all through the period and I can show by the correspondence—it may be true at a certain time and it may not be true at another certain time.

A. Yes, sir.

Q. And how frequently did that occur after you had this conversation with Kepner and received the additional collateral? 4473

A. I think it was a chronic condition right along through June that they were, as we called it, overdrawn to a very large amount.

Master: Do you mean that it was a chronic condition that Kepner understood that they were overdrawn, as you called it?

A. Yes, sir, because at any time an advance would be made practically, the adjustment of the

4474 account was made in my office, usually with Mr. Kepner present, sometimes with him and sometimes not; and he then would know exactly how much of what we called an overdraft would appear on that day that we had given him a check. In fact, somewheres in June I agreed, and I think that was another reason why this matter came up, to carry a permanent overdraft of $30,000 to $35,000 as we called it, overdraft, over and above the 80% they were entitled to against the approved accounts for the purpose of getting on what was called a bill of lading basis, Mr. Kepner believing that if we did that for him he would, within thirty
4475 or sixty days at the most, get on what we call a bill of lading basis, where the accounts would be accompanied by the bills of lading at the time that he would request further advances from us.

By Mr. Cohen:

Q. You have used two expressions in answer to the last question both of which I would like to have you explain. You have used the expression "bill of lading basis," what do you mean by that expression?

A. We mean by that when an account is accompanied by the evidence of shipment at the time
4476 that the account was assigned to us for an advance.

Q. The evidence of shipment is what?

A. The bill of lading or the shipping receipt.

Q. And was there a time before this conversation with Mr. Kepner when you were not upon this bill of lading basis?

Mr. Wolf: I object and ask that the witness be interrogated as to what the basis was prior to that time.

Mr. Cohen: I am basing my examination upon the answer in which he referred to

the fact that Mr. Kepner said that if this 4477
were permitted they would get a bill of lading basis, and I am entitled to find out in my own way, without conducting counsel's cross examination for him, what that means and why it was done and if he has any cross examination afterwards I presume your Honor will allow him full scope.

Mr. Wolf: I object to the question upon the ground that it is leading and submit that the proper question would be to ask what basis they were on prior to that time.

Objection overruled.

Q. Up to that time the business had been con- 4478
ducted upon a bill of lading basis?

A. As I recall it, yes, sir.

Q. Now, after that time, what, if anything, did you do to restore the business to what you called a bill of lading basis?

A. I did nothing. I made effort to secure that desirable method frequently but I was unable to do it and only was able to secure promises from Mr. Kepner time after time that within a reasonable time if I would continue to advance and allow him to have more money that he was entitled to under the contract that he would be able to get on a bill of lading basis, and that practically 4479
went on up to the time I left in October.

Q. Did you have any correspondence with Mr. Kepner on that subject?

A. On the bill of lading basis?

Q. Yes.

A. Yes, a good deal in attempting to secure the bills of lading that were missing, but I don't recall any particular correspondence relative to the latter part.

4480 Q. Have you the correspondence in which you requested bills of lading that were missing?

A. I have.

Q. Where is it now?

A. It is here.

Q. You have handed me a batch of papers, letters running from March 9th to November 29th, 1910, does that correspondence all relate to requests for bills of lading?

Mr. Wolf: Objected to as calling for the conclusion of the witness.

Overruled.

4481 A. Yes, sir.

Mr. Cohen: I offer the whole batch in evidence.

Mr. Wolf: Objected to as incompetent, immaterial and irrelevant and not having been properly proven.

Master: You haven't shown that they were sent in the usual course of business.

Q. What are the yellow sheets in this batch?

A. Duplicate carbons of letters addressed by my office to the Schwab-Kepner Company.

Q. And what are the white sheets headed
4482 Schwab-Kepner Company?

A. Letters received from the Schwab-Kepner Company in explanation of our letters addressed to them relative to the bills of lading.

Q. And are the white letters in response to the yellow carbon sheets?

A. I can't say that they all are, but they all refer to the bills of lading that are missing. Towards the end they adopted the custom of enclosing a letter with the collateral, containing the numbers of the certificates or invoices that

did not have bills of lading attached and those letters were kept on file in my office by a clerk whose duty it was to chase up the receipt of those particular bills of lading and if we did not get the bills of lading it was the duty of the clerk to write a letter to the Schwab-Kepner Company calling attention to the fact that we had not received bills of lading for any particular numbers. 4483

Mr. Cohen: May I ask counsel if he makes any point that the carbon copies are offered instead of the originals on file in the Schwab-Kepner Company?

Mr. Wolf: I cannot answer that question except to say that we will insist at this time upon the papers being proven in a legal way. I have not seen these papers and do not know what they purport to contain. If allowed an opportunity of examining the papers and having the records of the Schwab-Kepner Company investigated to ascertain whether or not they were received by the Schwab-Kepner Company, I can answer the question. 4484

Mr. Mr. Cohen:

Q. Were these letters ever shown to Mr. Wolf, Mr. Dockendorff? 4485

A. I think the entire files of all the correspondence with the Schwab-Kepner Company in my office were turned over to Mr. Wolf's office and he went through every one of them, as I understand it.

By Mr. Wolf:

Q. Did you see me examine those letters?

A. I had a representative present.

Q. Did you see me?

4486 A. I personally did not, but my representative was present and I understood from him that you did in company with an associate.

By Mr. Cohen:

Q. Did you give Mr. Wolf permission to examine your files?

Mr. Wolf: Objected to as incompetent, irrelevant and immaterial.

By Mr. Wolf:

Q. Are these all of the letters that you sent to the Receiver from the Schwab-Kepner Com-
4487 pany.

A. Those are all the letters that I have relative to the bills of lading proposition.

Q. But they are not the entire correspondence?

A. No, but any correspondence I have will be available.

Mr. Cohen: I now call upon the counsel for the Trustee to produce letters from J. E. Dockendorff to the Schwab-Kepner Company relating to shipping notices dated November 21st, 1910, letter of J. E. Dockendorff to the Schwab-Kepner Company re-
4488 lating to the same subject matter dated October 8th, 1910, letter to J. E. Dockendorff to the Schwab-Kepner Company dated September 2nd, 1910, letter of Dockendorff to the Schwab-Kepner Company dated August 24th, 1910, letter of Dockendorff to the Schwab-Kepner Company dated August 1st, 1910, letter of Dockendorff to the Schwab-Kepner Company dated July 19th, 1910, letter of Dockendorff to the Schwab-Kepner Company dated July 16th, 1910, letter of Dockendorff to the Schwab-Kepner Company dated June 27th, 1910

letter of Dockendorff to the Schwab-Kepner 4489
Company dated May 26th, 1910, letter of Dockendorff to the Schwab-Kepner Company dated May 24th, 1910, letter of Dockendorff to the Schwab-Kepner Company dated May 19th, 1910, letter of Dockendorff to the Schwab-Kepner Company dated May 17th, 1910, letter of Dockendorff to the Schwab-Kepner Company dated April 22nd, 1910, letter of Dockendorff to the Schwab-Kepner Company dated April 21st, 1910, letter of Dockendorff to the Schwab-Kepner Company dated March 29th, 1910, letter of Dockendorff to the Schwab-Kepner 4490
Company dated March 29th, 1910, and letter of Dockendorff to the Schwab-Kepner Company dated March 9th, 1910.

I now offer in evidence the original letters from the Schwab-Kepner Company, signed by the Schwab-Kepner Company in this file.

Mr. Wolf: We object to those letters going in evidence unless the signature is proven. I don't know at this time whether they are letters which have in fact come from the Schwab-Kepner Company. I said a moment ago to Mr. Cohen that 4491
if he will kindly restrain himself for a little while and give me an opportunity to go over the records of the Schwab-Kepner Company to see whether or not these letters are copies of letters received I shall be very glad to consent to their going in without any technical proof, but I am not going to be driven into admitting them.

By the Master:

Q. Were those letters received from the Schwab-Kepner in the usual course of business?

4492 A. Yes, sir.

Q. Did you often receive letters from them simply signed Schwab-Kepner Company in typewriting?

A. Yes, sir, relative to the bills of lading; always in that connection just typewritten without any signature, just typewritten on. They were received practically daily.

Q. Without any individual signature?

A. Yes, sir.

Q. And signed simply with the corporation name?

A. Yes, sir.

4493 Q. By the typewriter?

A. Yes, sir, it was a matter of routine between the two offices, in fact, I, personally, did not see them myself unless my attention was called to some particular thing a little out of the ordinary.

Letters received in evidence and marked Exhibit P1302, Documents Nos. 1 to 289, June 9th, 1911.

Recess Taken.

After Recess.

4494 JOHN E. DOCKENDORFF, recalled.

By Mr. Cohen:

Q. Now, Mr. Dockendorff, the other expression that you used that I wanted you to explain was the expression "overdraft" precisely what do you mean by that expression?

A. The amount of the advances given to the Schwab-Kepner Company over and above the 80 per cent. of the approved collateral in my office.

Q. Now, when did you first have a conversation with Mr. Dockendorff regarding such a so-called overdraft?

A. I think it must have been in the latter part of May, 1910. 4495

Q. And that conversation came about, I think you testified, from the fact that there was a slight overdraft?

A. Well, I don't think—yes, I don't think that there was more than a very slight overdraft.

Q. How much is it your best recollection there was at that time?

A. Well, I couldn't tell, five or ten or fifteen thousand.

Q. At this conversation what was said as to the continuance or discontinuance of the overdraft?

A. Well, the overdraft as I recall it at that time was practically a temporary affair; it would usually be made up within two or three or four days and then would occur again but I don't think we had what we called a permanent overdraft and understanding that I would allow them to have a fixed amount of money over and above the 80 per cent. they were entitled to until somewhere about June, about the time of this agreement with the bleacheries. 4496

Mr. Glen: I move to strike out the answer.

Mr. Cohen: I consent. 4497

Q. Confine yourself to this particular interview. What, if anything, was said regarding the continuance or discontinuance. If nothing was said at that time you can say so.

A. I don't recall anything.

Q. Subsequently, did you have any conversation with Mr. Kepner as to the amount of the overdraft?

A. Yes, sir.

Q. And when was that?

4498 A. Sometime in June.

Q. Now, will you please state just what was said at that conversation if you recall it.

A. Mr. Kepner wanted more money than we were willing to give him in accordance with the terms of our agreement and he also thought that if he were allowed to have a greater credit than the approved accounts in my office warranted my giving him, it would be a matter of a short while for him to place himself upon a bill of lading basis. I agreed at the time to give him that privilege up to $35,000, I think, for the purpose of his getting on a bill of lading basis.

4499 Q. Did he, in that conversation, offer any explanation as to how he proposed to utilize the overdraft so as to place himself or his company upon what you called a bill of lading basis?

Mr Glen: I think that is leading.

Q. What was said, if anything, about the method that Mr. Kepner would follow in utilizing the overdraft of $35,000 for the purpose of putting the company on a bill of lading basis with you?

A. I don't think anything very definite was said other than that he believed he would be able to then send the accounts receivable with bills
4500 of lading which implied and I believe it may have been spoken of at the time that he would have the condition at the bleachery in such shape that he would be able to send the bills of lading at the time that he sent the assigned accounts.

Q. Now, will you please confine yourself to giving the substance of the conversation, what did he say?

Mr Glen: First, I move to strike out the last part of that answer which stated that it implied so and so.

Master: I think that should be stricken 4501
out.

Mr. Glen. And second, I object to the last question on the ground that the witness has given the conversation fully as I understand it and I don't think he ought to be led or dragged any further on that point.

Overruled.

Q. The question refers to what did he say with reference to any method that he intended to follow in reducing the overdraft or using the overdraft for the purpose of putting the business upon a bill of lading basis; give us your best recollec- 4502
tion?

A. Well, I don't recall that there was any conversation as to method, but Mr. Kepner wanted this money in order to use in his business to pay for whatever commitments he might have and so place the bleachery account that he would be able to put himself on a bill of lading basis. Just what method Mr. Kepner had in mind I do not know. I don't think we ever discussed it other than in that general way.

Mr. Glen: I move to strike out all of that answer except the first clause.

4503

By the Master:

Q. What do you mean by saying that Mr. Kepner wanted these things?

A. He stated that he wanted them.

Q. On the occasion of this conversation, during this conversation?

A. Yes.

Motion denied.

By Mr. Cohen:

Q. In the conversation did you make any effort

4504 to find out what methods Mr. Kepner was going to follow in his business?

Mr. Glen: Objected to as leading and as going back over a question that has been answered, covered by five or six questions.

Objection sustained on the ground that it is leading.

Q. Now, have you stated all that you recall of that conversation?

A. I think I have, yes, sir.

Q. Do you recall whether or not you asked
4505 any questions concerning the methods that Mr. Kepner would employ in his business?

Mr. Glen: Objected to, we have just heard the witness say that he recalls nothing more.

Master: For the purpose stated by Mr. Cohen in his argument I think the question is admissible.

Objection overruled.

Question read.

A. No, sir.

Q. Well, the answer is ambiguous, what do you
4506 mean by "No, sir"?

A. I did not learn of any method at all, there was no method discussed.

Q. Now, did you have a conversation with Mr. Kepner regarding this so-called overdraft beyond the 80 per cent. after the June conversation?

A. Yes, sir, frequently.

Q. Can you recall any specific conversations?

A. I don't know that I can, but I do recall that it was the subject of conversation every time that Mr. Kepner called at my office for the purpose of securing money or for the purpose of advising me as to how much he would require in the next

few days, because in order to let Mr. Kepner know 4507
whether we would give him this money or not we had to have before us the amount of the so-called overdraft.

Mr. Glenn: I move to strike out the last part of the answer commencing, "because in order to," etc., and I ask that the Referee direct the witness to confine himself to answering the questions.

Motion denied.

Q. Now, what would be said at these conversations with regard to the overdraft, Mr. Dockendorff?

4508

A. Well, it would start perhaps by my stating, "You are overdrawn so much, you have received so much money (stating the amount) over and above the amount you are entitled to," and Mr. Kepner would then make a requisition, "We will need so much money (perhaps ten or twelve thousand), to-day," I would say, "How much collateral additional have you and when will that be here and when do you want this money." That would usually be the manner in which the discussion would be had.

Q. Well, did that conversation take place, in substance, on more than one occasion?

4509

A. Yes, a good many times.

Q. During what months?

A. Right up to the time I went to Europe, the last part of October, during July, August and September.

Q. Did you have any conversation with Mr Kepner just before you sailed?

A. Yes.

Q. With reference to the overdraft or with reference to the manner of conducting business with the Schwab-Kepner Company?

4501 A. Only as to desiring to ascertain as much as I could before I sailed what their commitments were going to be and whether they were going to be able to supply the collateral necessary for their commitments, and in a general way ascertain whether Mr. Kepner would be able to continue in business as he had stated he would if we continued to advance him money.

Q. Did you have any conversation with him covering those topics?

A. Yes.

Q. Where?

A. In my office.

4511 Q. How long before you sailed?

A. I think one or two days before.

Q. Was anything stated about insolvency or inability to go on in business?

A. Not the slightest. Mr. Kepner gave me to understand that he would be able to continue right along if I would leave instructions at my office to allow him to continue calling for money on the collateral he would send; in fact, I think we wrote some letters relative to it.

Mr. Glenn: I move to strike out the last part of the answer.

4512 Mr. Cohen: I consent.

Q. When you left, did you leave your business in charge of any partner or clerk, or what?

A. I left it with my clerks and I gave a power of attorney to Mr. Townsend.

Q. Will you state whether or not before you left for Europe the nature of the business required the making of plans for the handling of your customers' accounts?

Mr. Glenn: Objected to as immaterial, incompetent and irrelevant.

Overruled.

A. Yes, sir.

4513

Q. What, if any, plans did you have to make before you went for the conducting of your business?

Mr. Glenn: My objection is to apply to everything along this line.

A. The leaving of the necessary instructions to my clerks and the necessary credits available for the purpose of securing the necessary money to advance to the Schwab-Kepner Company and other people.

Q. Did you leave instructions with reference to the Schwab-Kepner Company?

A. I did.

4514

Q. What instructions?

A. To continue advancing on their accounts receivable as they came down.

Q. In the same manner in which it had been done before?

A. Yes, sir.

Q. And at that time had anything occurred to change the belief that you have testified to regarding the solvency or insolvency of the Schwab-Kepner Company?

Mr. Glenn: Objected to upon the same ground that we raised this morning, calls for a conclusion of the witness.

4515

Q. Did anything occur that changed the opinion to which you testified this morning regarding the solvency or insolvency of the Schwab-Kepner Company?

Mr. Glenn: Same objection.

Overruled.

A. No, sir.

Q. When did you return from Europe?

4516 A. The day after Thanksgiving Day, I think it was the 25th or 26th of November.

Q. In what condition did you find the Schwab-Kepner Company loan at that time?

A. The loan?

Q. I mean the general condition of the account.

A. I found that a very large amount of accounts receivable had been cancelled and had vitiated my collateral to the extent of $120,000.

Q. During what period had that occurred?

A. As I understood it, the early part of November, three or four or five days after I left.

4517 Mr. Glenn: I move to strike out the answer as hearsay.

Master: Unless it appears that it is not hearsay it should be stricken out.

Mr. Cohen: I will show that it is not hearsay. I will connect it.

Objection overruled upon Mr. Cohen's statement.

Q. Was this the subject of conversation between you and Mr. Kepner upon your return from Europe?

A. Yes, sir.

Q. What did you say to Mr. Kepner about it
4518 and what did he say to you?

Mr. Glenn: Objected to upon the ground that the statements of the bankrupt, admissions of the bankrupt as to the matters of fact which happened prior to the adjudication are not binding upon the Trustee.

Overruled.

A. I wanted to know how it was that such a large—

Master: Do you mean that you stated that?

A. I asked Mr. Kepner how it was that so 4519
many accounts had been cancelled at that time and he then stated that some of the checks that had been drawn by him against certain institutions who could more or less control the bleachery practice had been returned, protested and that he had been compelled to turn over the bills of lading of merchandise in transit representing accounts that had been assigned to me to those officers of the banks in order to satisfy them as to the overdraft caused by the banks having honored Schwab-Kepner Company checks against deposits of Schwab-Kepner Company checks drawn against other banks that proved to be 4520
worthless.

Q. Go on with the conversation.

A. That was what Mr. Kepner stated, the reason for it. I also found in my office a list of the accounts with the numbers and the amounts and the customers' names that had been cancelled by that transaction in the early part of November.

Q. Did you refer to that in the conversation with Mr. Kepner?

A. Did I refer to the list?

Q. Yes.

A. No, sir.

Mr. Glenn: Then I move to strike out 4521
that statement.

Mr. Cohen: I consent

Q. What did you say to Mr. Kepner after he told you that?

A. Well, I told him that he had committed something that he had no right to do, injuring me to the extent that apparently that cancellation would injure me and he had practically no excuse to give other than that explanation I have stated.

Mr. Glenn: I move to strike out the

4522 latter part of the answer as being purely argumentative and not responsive.

Motion denied.

Q. Now, at that conversation, was anything said regarding the solvency or insolvency of the Schwab-Kepner Company or its ability to go on with its business?

A. No, sir, on the contrary, I think Mr. Kepner stated that he still thought he might be able to continue and devise some plan of continuing if I would continue to advance him. He asked for $7,500 further advances that day, with the understanding that he would have the collateral—I
4523 think that was on Friday morning—that he would have the collateral Monday morning and that they would have ample time to ascertain the condition of the firm, and I gave him a check.

Q. You gave him $7,500?

A. Yes, sir.

Q. What security did he give you at that time?

A. Nothing.

Q. Did he agree to give you security?

A. He agreed to make it good by Monday morning.

Master: How did he agree to make it
4524 good?

A. By accounts receivable that he said he had in his office and that he said he would have by Monday morning.

Q. Now, prior to this time, had you any knowledge of the condition of the business of the Schwab-Kepner Company other than that disclosed by the financial statements submitted to you from time to time?

A. No, sir.

Q. Had you ever made any investigation into

the assets or liabilities of the concern other than 4525
that disclosed by those statements?

A. No, sir, never.

Q. Had you ever received any information other than that disclosed by those statements?

A. Relative to the financial standing of the company, no, sir.

Q. When, if ever, was the first information that you received that the company was in such financial difficulties that the question of continuing its business came up?

A. That was this interview after my return from Europe, at which time Mr. Kepner wanted two or three days' time and I advanced the $7,500 4526
to prevent certain notes going to protest and to have the necessary time to be able to give me the exact condition of the firm.

Q. Did you request him to ascertain the condition or did he volunteer to ascertain the condition?

A. I think he volunteered it.

Q. What is your best recollection on that score?

A. I am not certain. I think I also stated that I wanted to know the exact condition of things after what had transpired during my absence in Europe.

Q. Had you ever made any such statements as 4527
that before in your dealings with Mr. Kepner?

A. No, sir.

Q. Now, how soon after that did you have another conversation with Mr. Kepner.

A. Monday morning.

Q. What took place on that Monday morning?

A. The following Monday morning Mr. Williams came down with Mr. Kepner and they had papers with them. Mr. Williams showed a statement which I glanced at. I did not examine it carefully, but I glanced at it sufficiently to see

4528 a very large deficit. Mr. Kepner stated that he was surprised at the condition they had found and he didn't see anything else to do but to stop. I then wanted to know what he was going to do about the collateral which he had promised to give me and I soon saw after some stormy words passing between us that he would make no attempt to give me any further collateral in accordance with his promise of Friday. I was under the impression that he left with Mr. Williams, that they both left at the same time and I think they went to their attorney.

4529 Mr. Glenn: I move to strike out the last part of the answer, "I was under the impression," etc.

Mr. Cohen: I consent.

Q. What did Mr. Kepner say as to his future plans?

A. He said that he thought that the only thing for him to do was to stop, that in view of the large deficit he had never had any idea existed that the only thing to do was to stop.

Q. Does that comprise the whole of your recollection as to the conversation?

A. Practically all, yes.

4530 Q. Do you recall anything being said about the creditors?

A. Oh, yes, I do. When I saw the statement I made the remark, myself, before anything was said by Mr. Kepner, I think, that there was nothing for Mr. Kepner to do but to see his creditors, or call his creditors.

Q. Was anything said about consulting an attorney?

A. Not by me at all.

Q. Anything said by Mr. Kepner?

A. Not that I recall.

Q. You say the interview was stormy, just what do you mean by that? 4531

A. Well, I upbraided Mr. Kepner for leaving me in the position that was, I thought, very precarious, insofar as the collateral that remained in my office would surely insure a loss to me.

Mr. Glenn: I move to strike out the answer as being a conclusion.

Motion denied.

Q. Give us as nearly as you can, precisely what you recall was said. Mr. Dockendorff, I should like the record to show that I am telling you that instead of using such expressions as "I upbraided him," or "He wanted," that you confine yourself to saying, "He said," or "I said," and give what was said, don't attempt to summarize it or give it in narrative form, but state just what you recall you said or he said in substance. 4532

A. I recall telling Mr. Kepner that he had no right to receive $7,500 from me on Friday, in view of the condition of things and Mr. Kepner stated that he did not know at that time how bad things were, how bad the situation was and I told him that I had favored him and believed in him to the extent of giving him large amounts of money greater than the collateral would warrant and that I was very much surprised at the turn affairs had taken. I don't know that I can recall anything else more definite than that. 4533

Q. What did he say when you said this to him?

A. Mr. Kepner had very little to say.

Q. Did he say anything?

A. Well, one of the things he said was that he wouldn't be able to give me any more collateral on that day and that he also was very much surprised about the statement that had been gotten up and that he would have to see the creditors.

4534 Q. Prior to that time had any statement of the condition of the Schwab-Kepner Company showing a deficit been shown to you?

A. No, sir.

Q. During the month of November, was the business or was it not on what you called a bill of lading basis?

A. It was very nearly. I mean by that that all the collateral that came down to the office with the exception of only some ten or fifteen thousand came down with the bills of lading attached.

4535 Mr. Glenn: That I move to strike out on the ground that it is obviously hearsay from the previous answers that he was in Europe in November.

Objection sustained. Motion allowed.

Q. Before you gave Mr. Kepner the $7,500, did you examine into the condition of the account so far as the collateral being on a bill of lading basis was concerned?

A. Yes, sir.

Q. What did you discover?

Mr. Glenn: Objected to upon the ground that it is hearsay.

4536 Objection sustained.

Q. How did you investigate it?

A. I inquired from my clerks how the account had been carried during my absence and I was told the understanding that was had with the Schwab-Kepner Company that the collateral should be accompanied by the bills of lading.

Mr. Glenn: I move to strike out.

Motion allowed.

Q. I want to know just what information you

did receive prior to lending the $7,500 regarding 4537
the conduct of the business in your absence?

Mr. Glenn: Same objection.

Objection sustained.

Q. During the time that you were doing business with the Schwab-Kepner Company, did you receive any reports from any Directors of the company?

A. As to—any kind of reports?

Q. Reports of the Directors as to the management of the company?

A. No, sir.

Q. Were you informed of the resignation of 4538
Mr. Williams as a Director of the company?

A. Yes.

Q. How were you informed?

A. By letter.

Q. From whom?

A. From Mr. Williams.

Q. Have you that letter.

A. I have.

Q. Will you produce it, please?

Letter produced by witness.

Q. When did you first see that letter, Mr. Dockendorff? 4539

A. On my return from Europe.

Q. Was it after you saw this letter that you gave the $7,500 to the Schwab-Kepner Company?

A. Yes, sir.

Q. And did you give the Schwab-Kepner Company any more money after that $7,500?

A. No, sir.

Q. Did you receive any more collateral from the Schwab-Kepner Company after that interview?

A. I think we got some collateral on Saturday, the following day.

4540 Q. How much did it amount to?

A. I don't recall just how much.

Q. The records in evidence will show just what you did get?

A. Yes.

Q. Can you tell us approximately how much it amounted to?

A. Oh, a small amount, perhaps three or four thousand. I may say that the account at the time that I gave the $7,500 showed that the Schwab-Kepner Company owed us for some twelve or fourteen thousand dollars of collateral for the advances previously made prior to the $7,500;
4541 in other words that the Schwab-Kepner Company had failed to send us within twelve or fourteen thousand of collateral which would have warranted our giving as much money as we gave prior to the $7,500 remittance.

Mr. Glenn: I object and move to strike out the answer on the ground that the account speaks for itself, it is a conclusion of the witness, hearsay and not responsive to any question.

Motion denied.

By the Master:

4542 Q. During the time that you were away, Mr. Dockendorff, was the loan held down to the 80%?

A. They tried to very hard, sir, but they didn't. They were compelled to give more than the 80%.

Q. Did you go to Europe on a pleasure trip or a business trip?

A. Both. I went because I was worn out and I wanted the rest of going to Genoa, taking the long route. I had an interview at London—but I cut it short when I received cables relative to the Schwab-Kepner Company. I stopped at Gib-

raltar and cut my vacation trip short and went 4543
by express to London.

Q. Your trip was principally a pleasure trip, business was somewhat incidental?

A. Yes, because it was only a matter of calling on two or three correspondents in London, nothing in particular called me there.

Mr. Cohen: I offer these two letters in evidence.

There being no objection, received in evidence and marked Exhibit P1303, June 14th, 1911, consisting of two sheets.

The exhibit reads as follows:

4544

First Sheet.

"THE SCHWAB-KEPNER COMPANY
COMMISSION MERCHANTS

66, 68 & 70 Leonard Street

New York City, Nov. 2, 1910

J. E. Dockendorff, Esq.
20 Broad Street, City.

Dear Sir:—

I enclose copy of a letter which I have just ad- 4545
dressed to the president of The Schwab-Kepner Company and which speaks for itself.

Very truly,

Cyrus Williams."

4546 Second Sheet.

"THE SCHWAB-KEPNER COMPANY
COMMISSION MERCHANTS

66, 68 & 70 Leonard Street

New York City, Nov. 2, 1910

J. B. Kepner Esq., President
The Schwab-Kepner Company
66 Leonard St., City.

Dear Sir:—

I understand that the minutes of The Schwab-
4547 Kepner Company show that I am a director of the company, I did not take this seriously and however and as any connection of this nature arose wholly out of an arrangement between your company and Mr. J. E. Dockendorff I tender my resignation as such director to take effect at once.

Yours very truly

Cyrus Williams."

Q. I call your attention to this language in this letter of Mr. Williams to Mr. Kepner, "I understand that the minutes of the Schwab-Kep-
4548 ner Company show that I am a Director of the company. I did not take this seriously however —" Do you know to what Mr. Williams referred in using that language?

Mr. Wolf: Objected to unless it is the result of a conversation that Mr. Dockendorff had with Mr. Williams.

Answer taken subject to the objection.

A. Yes, sir.

Q. Was that the subject of conversation between you and Mr. Williams?

A. Not the letter, no, sir.
Q. No, I mean the matter. 4549
A. Yes.
Q. What was the conversation?

Mr. Wolf: Fix the time.

A. At the time of Mr. Williams' employment he was to have been made a Director of the Schwab-Kepner Company.

Mr. Wolf: I move to strike out the answer as not responsive, the question calls for a conversation.

Motion allowed.

4550

Q. Give the whole of the conversation.

Mr. Wolf: At what time, I ask that the time be fixed.

Mr. Cohen: At the time of Mr. Williams' employment. The witness fixed the time in the answer which was stricken out.

Mr. Wolf: As I understand the ruling the question should state the time of the conversation called for. Mr. Dockendorff may have in mind an entirely different one from the conversation called for.

A. At the time that Mr. Williams was engaged, 4551
which was the early part of July, I told him that I wanted him to be a Director of the Schwab-Kepner Company and Mr. Kepner also wanted him to be a Director of the Schwab-Kepner Company.

By the Master:

Q. You told him that or Mr. Kepner told him that?

4552 A. Both of us.

Q. At this same conversation?

A. Yes, sir.

By Mr. Cohen:

Q. What did he say?

A. As far as I know he was willing to accept the appointment.

Q. Anything else said?

A. No, sir.

Q. Anything else said at any subsequent interview about his being a Director of the company?

A. Not that I recall.

4553 Q. Did he ever make any report to you as a Director of the company?

A. No, sir.

Q. Did he ever report to you any of the minutes of the transactions of the corporation?

A. I never received a report of any Directors' meeting of the Schwab-Kepner Company.

Q. When was Mr. Williams first employed, Mr. Dockendorff?

A. In the early part of July.

Q. Did you have any conversation with him before he entered upon his duties?

A. I did.

4554 Q. What were the conversations, what did you say and what did he say?

A. I told Mr. Williams that there was an opening in the Schwab-Kepner Company for a good man that could assist Mr. Kepner and make himself generally useful for the benefit of the financing of the business; that I wanted someone to more or less represent me in the connection between the two offices arising from the contract between the Schwab-Kepner Company and myself

for the purpose of my advancing money against 4555
the assigned accounts receivable. Mr. Kepner was present, I think, at the second interview and those topics were discussed generally between us three at that time. I may say that Mr. Kepner was very anxious to secure the services of a competent man to help him to reorganize and systematize the bookkeeping end of it so that he could devote more time himself, personally, to the buying and selling of goods.

Mr. Wolf: I move to strike out the latter part of the answer, "Mr. Kepner was very anxious, etc." as not responsive and as stating the witness's conclusion. 4556

Mr. Cohen: What do you mean when you say, "Mr. Kepner was very anxious?"

Witness: Statements made by Kepner to me.

Mr. Wolf: I move to strike out as being a conclusion of the witness.

Motion allowed.

Q. What, if anything, did Mr. Kepner say in these conversations with regard to Mr. Williams?

A. That he wanted a man to be of assistance to him in looking after the business insofar as the bookkeeping and the credits and collections were 4557
concerned. One of the main reasons that I had in mind at the time of Mr. Williams' engagement was in order that collections would be made as quickly as possible.

Q. Now, Mr. Dockendorff, you cannot state what you had in mind, you can only state what you said. If you said what you had in mind you must say so, but you must confine yourself to those matters which you had in mind which you used in conversation.

4558 A. I stated to Mr. Williams that I wanted someone to push collections for accounts that were very slow in payment, a good many of which had been on the books for a long time apparently, as disclosed by the Hart Bros., Tibbetts & Heiron report, I think, and to see that the credits for returned merchandise were passed at the proper time and that the work in the office would be as systematic as possible insofar as it affected my business or my collateral.

Q. What did Mr. Williams say?

A. Mr. Williams said that he was anxious to secure a position that would offer a future and
4559 he would be very glad to act in that capacity.

Q. What did Mr. Kepner say?

A. Mr. Kepner said that he would be very glad to have a man like Mr. Williams there to assist him in the general conduct of the business.

Q. Now, prior to that time, had anybody been there to see to the collections for you?

A. Yes, sir, Mr. Hardy.

Q. And prior to Mr. Hardy had anybody been there?

A. No, sir, except—no one placed there specifically through my efforts one of the officers of the company from the beginning of the agree-
4560 ment with the Schwab-Kepner Company in 1908, was bonded to me for the turning over of all checks received from debtors; other than that I had no one there.

Q. Is it usual for you in your business to bond an employee of the concern when you advance money?

Mr. Glenn: Objected to as raising the same question that your Honor ruled upon this morning.

Objection sustained.

Q. Did you have any conversation with Mr Kepner regarding the bonding of an employee before it was done? 4561

A. Yes, sir.

Q. When was that conversation?

A. Before the first agreement.

Q. What did you say to him about it?

A. That was one of the requirements of my method of doing business that one of the officers of the corporation would have to be bonded to me for the turning over of all checks of debtors.

Q. Now, then, Mr. Williams entered upon his employment?

A. He did. 4562

Q. Did he from time to time report to you what progress he was making in re-organizing the bookkeeping system of the Schwab-Kepner Company?

A. I don't know that he ever made any report relative to the re-organizing—I don't know that there was any actual re-organizing if you mean by that any change in the method of bookkeeping. What I have testified to was more the proper passing of credits and making entries in the proper books of the transactions of the Schwab-Kepner Company and the purchase of their goods.

Q. That is just what I am referring to by the re-organization of the methods of bookkeeping; did Mr. Williams report to you from time to time in regard to that? 4563

A. Yes, the remittances that came down after Mr. Williams was there showed a vast improvement in the proper record of those transactions in the books of the Schwab-Kepner Company.

Mr. Wolf: I move to strike out, the question could and should have been answered yes or no.

4564 Mr. Cohen: I will consent that the answer be stricken out.

Question read:

A. I received no specific report from Mr. Williams as to that.

Q. Did you have any conversation with regard to that afterwards?

A. I don't recall any definite conversation, Mr. Cohen.

Q. Did you have any conversation with Mr. Williams after his employment with regard to the manner in which the Schwab-Kepner Company was conducting its business?

4565 A. No, sir, not relative to the general conducting of the Schwab-Kepner Company business. I never did—all I was interested in with Mr. Williams was the proper reporting to me of remittances relative to my particular end of the accounts receivable business.

Mr. Wolf: I move to strike out all after the words, "I never did."

Motion allowed.

Q. Did you have any conversation with Mr. Kepner after this conversation with regard to Mr. Williams?

4566 Mr. Glenn: Objected to as incompetent.

Objection withdrawn.

A. Yes, sir.

Q. Was there more than one such conversation?

A. Yes, sir.

Q. Can you recall any specific one of the conversations?

A. Mr. Kepner was very glad—

Q. Answer that yes or no.

A. Yes, sir.

Q. Will you state when that conversation took 4567
place and what was said?

A. During July and August, 1910.

Q. What was said?

A. Mr. Kepner stated that Mr. Williams was competent and that Mr. Williams was of assistance to him in this business and he was very glad to have Mr. Williams there.

Q. Was there more than one such conversation?

A. I think that Mr. Kepner repeated that to me several times.

Q. How long afterwards?

A. Oh, within the next thirty or sixty days 4568
after the engagement of Mr. Williams.

Q. That brought you down to what month?

A. September, the latter part of September.

Q. Did Mr. Williams ever speak to you concerning the solvency or insolvency of the Schwab Kepner Company?

A. Not that I recall, sir.

Q. Did he ever express any opinion as to whether or not the concern was doing a profitable business?

A. I don't think that question was discussed between us.

Q. Did you have any conversation with Mr. 4569
Kepner in regard to the orders that he had at the mills for future deliveries?

A. Yes, I have heard Mr. Kepner speak of them.

Q. What did he say?

Mr. Wolf: Fix the time, will you please?

A. During May —

Mr. Wolf: We object unless the time is

4570 fixed in the question, the question calls for a general conversation without fixing any particular conversation.

Mr. Cohen: It appears from Mr. Kepner's testimony that he testified that he frequently had conversations with Dockendorff in which he informed him that he had profitable contracts with the mills for future delivery and that these conversations took place at various times. The evidence is offered not for the purpose of contradicting Mr. Kepner, but for the purpose of bringing out clearly the situation
4571 as the witness understood it. I think the objection to not fixing the time, under those circumstances, is not a proper one.

Mr. Wolf: Mr. Kepner testified that he hoped that the contracts that he had would be profitable, but that he knew that they were not making any money, in fact that they were losing money but that there was, on his part, a hope and expectation accompanied by a prayer that the tide would turn and that they would make some money out of these contracts.

4572 Q. Can you fix the time of the conversation?

A. I think in May and June of last year.

Q. Now, will you state what was said by Mr. Kepner and what was said by you?

A. Mr. Kepner stated that he had contracts extending for a long period of time with quite a number of mills and that these contracts were very favorable to him in that he had executed these contracts at a time when he secured better prices than the market prices existing at the time he mentioned it to me.

Q. Did you have more than one such conversation with Mr. Kepner? 4573

A. I think he repeated that several times.

Q. Down to what date?

A. Certainly up to September, anyway.

Q. Did Mr. Kepner ever tell you that he was selling goods at a loss?

A. Not generally, no, sir.

Q. What do you mean by not generally?

A. I think I heard that sometimes they would—

Master: The question is what do you mean by not generally.

Mr. Wolf: I suggest that the time and place of that conversation be fixed, it is extremely important. 4574

Mr. Cohen: That can be fixed afterwards.

A. I mean by not generally, that they weren't losing right straight along or that the result of months of merchandising was causing a loss to the company. I never knew that—

Mr. Wolf: I move to strike out.

Mr. Cohen: I consent.

Q. Assuming that you mean that goods were being sold generally as a loss, did you ever have any such conversation with Mr. Kepner? 4575

A. No, sir.

Q. Did Kepner ever inform you that he was selling any specific goods at a loss?

A. No, sir, I don't recall any specific invoices, but I do recall the matter coming up in one or two interviews where I got the impression that certain amounts of goods had been sold at a loss, but the impression left on my mind was

4576 that it was only in two or three or four invoices, a matter that was not of any consequence.

Mr. Wolf: I move to strike out the last part of the answer as stating the conclusion of the witness.

Motion allowed.

Q. State what was said by Mr. Kepner.

A. The impression that I have—

Q. You cannot state your impressions, you can state your recollection of what he said.

A. The recollection I have is that Mr. Kepner stated at the time that certain specific accounts
4577 were mentioned that they had been sold at a loss, but as I say those are only specific accounts, they did not amount to very much, nor was anything said at the time to give me the impression that the company was selling goods generally at a loss.

Mr. Wolf: I move to strike out the last part of the answer.

Master: Everything from the word "but" will be stricken out.

Q. Was anything said at that interview where
4578 in specific accounts were referred to regarding sales generally at a loss?

A. No, sir.

Q. Were you ever informed by Mr. Kepner that any sales were being made of goods in the gray?

A. Yes, sir.

Q. When were you so informed?

A. I cannot recall any specific date but I know that the Schwab-Kepner Company was in the habit of selling goods in the gray, I should say practically from the time that I started to do business with them.

Mr. Wolf: I move to strike out the last part of the answer as not responsive. 4579

Motion allowed.

Q. What is your best recollection as to the first time your attention was drawn to the sale of goods in the gray by the Schwab-Kepner Company?

A. It must have been some time the early part of 1910, possibly in 1909.

Q. Did you learn prior to that time that the Schwab-Kepner Company was selling goods in the gray?

Mr. Wolf: Objected to as incompetent, irrelevant and immaterial, the witness has just answered the question and it calls for a conclusion. 4580

Objection sustained on the ground that the question was just answered.

Q. Did you have any conversation with Mr. Kepner in 1909 with reference to the sale of goods in the gray by the Schwab-Kepner Company?

A. Not that I recall. In 1909, I think, you asked me?

Q. Yes.

A. Not that I recall 1909 as the specific date they commenced.

Q. Do you recall any conversation in 1909 with regard to the sale of goods in the gray? 4581

A. No specific conversation, no, sir.

Q. Do you recall any general conversation on that subject?

A. No. All I know is that there were such sales in 1909.

Mr. Wolf: I move to strike out the last part of the answer.

Motion allowed.

4582 Q. Did you receive information that there were sales of goods in the gray and did you receive such information in 1909?

Mr. Wolf: Objected to unless the information was contained in a conversation and the conversation should be called for and if it is in writing the writing should be produced.

Objection sustained.

Q. Did you have any conversation with Mr. Kepner in 1909 with regard to the sale of goods in gray?

A. Yes, sir.

4583 Q. When did you have such a conversation?

A. I think the matter of gray goods came up when I questioned some sales to Winn Ferguson and Ferguson-McKinney Company.

Q. And when was that conversation?

A. Just before my sailing for Europe.

Q. What was said?

A. At that time I received accounts against Winn Ferguson whose credit rating was not satisfactory to me for the amount involved and Mr. Kepner stated that he could have those goods billed to Ferguson-McKinney instead and called up Winn Ferguson on the telephone before me and Mr. Will-

4584 iams and as we understood it from the conversation that transpired, the arrangement was made to have those accounts invoiced to Ferguson-McKinney Company.

Mr. Wolf: I move to strike out the answer beginning with the words "as we understood."

The Master: The part of the answer beginning with "as we understood" is stricken out.

Q. What did Mr. Kepner say?

A. He stated that it would be just as satisfactory 4585
to Winn Ferguson to have the goods invoiced to Ferguson-McKinney as the result of the conversation he had in front of me over the telephone.

Q. Now, at that time, what, if anything, was said as to sales of goods in the gray, generally?

A. I don't recall anything in particular.

Mr. Wolf: When we cross examine Mr. Dockendorff we would like to have him produce here all of the letters, memoranda and writings which he has received from Mr. Williams at any time subsequent to Mr. Williams' employment and I include in that all which have been offered in evidence and 4586
those which have not been offered in evidence. I don't know whether there are any which have not been offered in evidence but I include in my request to produce, everything. I also ask that Mr. Dockendorff produce copies of the letters that he sent to the Schwab-Kepner Company from the first of August, 1910, to the time of the receivership.

Mr. Cohen: I understand, Mr. Referee, that Mr. Wolf was given permission to look over all of the correspondence in our files with the Schwab-Kepner Company and with 4587
Mr. Williams. Such an examination was made by him or by the Trustee and Mr. Dockendorff was requested to set aside certain letters to produce at this hearing before you and those letters were set aside and will be produced. The letters have been sorted and arranged and if there are any other letters than those for which specific request has already been made, since the other side have had opportunity to go

4588 through our files, I think it is only fair that they should make a specific request for the letters rather than to make this blanket request. It seems to be the habit of the attorney for the Trustee to first examine everything we have got and then pick out specific things to produce and then to make a blanket request for everything. We couldn't have been more courteous than we have been in this case in allowing the other side to go through our files and pick out what they want and we have set aside everything they have asked for.

4589 The Master: There is nothing for me to rule upon. I suppose they are entitled to examine everything that has a bearing upon this case and I suppose it all has, all that relates to the transactions between Dockendorff and the Schwab-Kepner Company.

Sworn to before me this 14th day of June, 1911.

Adjourned to Friday, June 16th, 1911 at 10:30 A. M.

4590

GREEY, TRUSTEE IN BANKRUPTCY OF SCHWAB-KEPNER COMPANY, *v.* DOCKENDORFF.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 544. Argued December 2, 1913.—Decided December 15, 1913.

No sufficient reason being shown for departing from it, this court follows its rule of not disturbing findings made by the Master, the court of first instance and the Circuit Court of Appeals.

Where the goods never would have come into the bankrupt's hands, had he not promised to give a lien thereon to one making the advances necessary for obtaining them, there is no reason why the rights of general creditors without liens should intervene to defeat security given in good faith and before there was any knowledge of insolvency. *National City Bank* v. *Hotchkiss, ante*, p. 50, distinguished.

Secrecy of a lien on goods purchased by advances made by the lienor does not invalidate it where there was no active concealment or any attempt to mislead anyone interested to know the truth, nor does merely keeping silent in such case create an estoppel.

203 Fed. Rep. 475; 121 C. C. A. 597, affirmed.

THE facts, which involve the validity of liens claimed by a creditor on accounts receivable assigned to him by the bankrupt, are stated in the opinion.

Mr. Benjamin G. Paskus, with whom *Mr. Ralph Wolf*, *Mr. James N. Rosenberg* and *Mr. Garrard Glenn* were on the brief, for appellant.

Mr. Julius Henry Cohen, with whom *Mr. Gerard B. Townsend* and *Mr. Theodore B. Richter* were on the brief, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This was a petition by the appellee, Dockendorff, filed in the bankruptcy proceedings against the bankrupt, the

Schwab-Kepner Company, to have paid over to him the proceeds of accounts receivable alleged to have been assigned to him by the bankrupt. The defences set up were that the assignment was a preference and that it was made without present consideration with intent to defraud creditors of the bankrupt concern. The case was referred to a special master who found that it did not appear that either the petitioner or the bankrupt knew that the latter was insolvent at the time of the supposed preference or that there were any transfers with intent to defraud creditors, and found for the petitioner. His finding of facts and conclusion were concurred in by the District Court and Circuit Court of Appeals. 203 Fed. Rep. 475; 121 C. C. A. 597.

A part of the appellant's brief is devoted to the attempt to show that the findings below as to insolvency and the knowledge of the parties was wrong, and a distinction is urged between what are called the Master's inferences and the facts upon which those inferences were based. But no sufficient reason is shown for departing from our ordinary rule, where the Master, the court of first instance, and the Circuit Court of Appeals have agreed, and in the course of the hearing this was admitted. *Merillat* v. *Hensey*, 221 U. S. 333. On the other side it is argued that this is not a controversy arising in bankruptcy proceedings within § 24 of the Bankruptcy Act of July 1, 1898, c. 541, 30 Stat. 544, 553, and that therefore the appeal should not have been allowed. This contention if open, seems to be answered sufficiently by *Knapp* v. *Milwaukee Trust Co.*, 216 U. S. 545. But the appellant's main proposition is that the transactions with the appellee were fraudulent in law however unconscious of it the parties may have been, and so it is necessary to make a short statement of the facts.

The bankrupt, a New Jersey corporation, did business in New York as a cotton converter. It bought raw

material from the mills, ordered it sent to bleacheries designated by it, sold the goods when finished and had them shipped from the bleacheries to the buyers. Dockendorff, on favorable statements of the Company's condition, made successive agreements to procure loans not exceeding $175,000 at any one time, the bankrupt giving demand notes, assigning as security all its accounts receivable thereafter to be created, and paying certain commissions. In May, 1910, the agreement now in question was made. By this the bankrupt was to assign within seven days after shipment the accounts receivable of credit sales made by it; upon that security Dockendorff was himself to lend eighty per cent. of the net face value of such as he should approve, less commissions and discounts, up to $175,000; the bankrupt was to give its notes, deliver the shipping documents, furnish evidence of actual receipt of the merchandise when required, notify Dockendorff of any return of goods or counterclaims, deliver the proceeds of such accounts as were proper and permit him to examine its books and correspondence &c.; Dockendorff's lien was to be for all sums due, and to cover all accounts, but he was not bound to lend on accounts not approved by him. Further details do not need to be stated in view of the establishment of the parties' good faith. On November 29, 1910, an involuntary petition was filed, the bankrupt then owing Dockendorff $252,838.54 for advances under the agreement, and he having received assignments of accounts from the bankrupt as it received orders, that is, after the contract of sale was made, but before the delivery of the goods.

The trustee relies upon the general application of the lien under the agreement as constituting a fraud in law. Whatever effect it might have as evidence must be laid on one side in view of the findings below. The question here is whether successive assignments of accounts by way of security, in pursuance of a contract under which ad-

vances were made to enable the assignor to get the goods on the faith of the undertaking that the accounts should be assigned, were bad because the contract embraced all accounts, although neither party contemplated any fraud. The rule of the English statutes as to reputed ownership may extend to debts growing due to the bankrupt in the course of his business, but we have no such statute. The advances were the means by which the bankrupt got the ownership of the goods. The contract of itself would operate as a conveyance as soon as the rights to which it applied were acquired. *Field* v. *New York*, 6 N. Y. 179. We do not see why in the interval between the acquisition of the goods and the specific assignment of accounts, the right of general creditors without lien should intervene to defeat a security given in good faith, when, but for the promise of it, the property never would have come into the bankrupt's hands. There may have been a moment when the goods could have been attached, or when, if insolvency had been made known, as in *National City Bank* v. *Hotchkiss*, *ante*, p. 50, it would have been too late to make the promised lien good. But in this case, the lien was acquired before any knowledge of insolvency, and before any attachment intervened. *See Jaquith* v. *Alden*, 189 U. S. 78. *Coder* v. *Arts*, 213 U. S. 223. *Van Iderstine* v. *National Discount Co.*, 227 U. S. 575, 583. It is objected that this lien was secret. But notice to the debtors was not necessary to the validity of the assignment as against creditors, *Williams* v. *Ingersoll*, 89 N. Y. 508, 522, and merely keeping silence to the latter whether known or unknown, created no estoppel. *Wiser* v. *Lawler*, 189 U. S. 260, 270. *Ackerman* v. *True*, 175 N. Y. 353, 363. There was no active concealment and no attempt to mislead anyone interested to know the truth.

We content ourselves with this very general answer to an argument that dealt with many details that we have not mentioned, because those details were material only to a

reconsideration of the findings of fact. Probably a hope of securing such a reconsideration was one of the inducements toward bringing the case here.

A subordinate question was raised on the exclusion of some of the bankrupt's books, as to which it seems to us enough to say that it does not appear that any wrong has been done.

Decree affirmed.

KINDER *v.* SCHARFF.